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# Executive Orders

## EXECUTIVE ORDER KBB 07-25

Bond Allocation—Hammond-Tangipahoa  
Home Mortgage Authority

WHEREAS, pursuant to the Tax Reform Act of 1986 and Act 51 of the 1986 Regular Session of the Louisiana Legislature, Executive Order No. KBB 2005-12 was issued to establish:

(1) a method for allocating bonds subject to private activity bond volume limits, including the method of allocating bonds subject to the private activity bond volume limits for the calendar year of 2007 (hereafter "the 2007 Ceiling");

(2) the procedure for obtaining an allocation of bonds under the 2007 Ceiling; and

(3) a system of central record keeping for such allocations; and

WHEREAS, the Hammond-Tangipahoa Home Mortgage Authority has requested an allocation from the 2007 Ceiling to provide single family mortgage financing with respect to owner-occupied residences owned by low and moderate income persons located in the city of Hammond, parish of Tangipahoa, state of Louisiana, in accordance with the provisions of Section 146 of the Internal Revenue Code of 1986, as amended;

NOW THEREFORE, I, KATHLEEN BABINEAUX BLANCO, Governor of the state of Louisiana, by virtue of the authority vested by the Constitution and the laws of the state of Louisiana, do hereby order and direct as follows:

SECTION 1: The bond issue, as described in this Section, shall be and is hereby granted an allocation from the 2007 Ceiling in the amount shown:

Amount of Allocation	Name of Issuer	Name of Project
\$15,000,000	Hammond-Tangipahoa Home Mortgage Authority	Single Family Mortgage Revenue Bonds

SECTION 2: The allocation granted herein shall be used only for the bond issue described in Section 1 and for the general purpose set forth in the "Application for Allocation of a Portion of the State of Louisiana Private Activity Bond Ceiling" submitted in connection with the bond issue described in Section 1.

SECTION 3: The allocation granted herein shall be valid and in full force and effect through December 31, 2007, provided that such bonds are delivered to the initial purchasers thereof on or before December 29, 2007.

SECTION 4: All references in this Order to the singular shall include the plural, and all plural references shall include the singular.

SECTION 5: This Order is effective upon signature and shall remain in effect until amended, modified, terminated, or rescinded by the governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of

Louisiana, at the Capitol, in the city of Baton Rouge, on this 29th day of October, 2007.

Kathleen Babineaux Blanco  
Governor

ATTEST BY  
THE GOVERNOR  
Jay Dardenne  
Secretary of State  
0711#088

## EXECUTIVE ORDER KBB 07-26

Bond Allocation—Lafayette Public Trust  
Financing Authority

WHEREAS, pursuant to the Tax Reform Act of 1986 and Act 51 of the 1986 Regular Session of the Louisiana Legislature, Executive Order No. KBB 2005-12 was issued to establish:

(1) a method for allocating bonds subject to private activity bond volume limits, including the method of allocating bonds subject to the private activity bond volume limits for the calendar year of 2007 (hereafter "the 2007 Ceiling");

(2) the procedure for obtaining an allocation of bonds under the 2007 Ceiling; and

(3) a system of central record keeping for such allocations; and

WHEREAS, the Lafayette Public Trust Financing Authority has requested an allocation from the 2007 Ceiling to provide single family mortgage financing with respect to owner-occupied residences owned by low and moderate income persons located in the city of Lafayette, parish of Lafayette, state of Louisiana, in accordance with the provisions of Section 146 of the Internal Revenue Code of 1986, as amended;

NOW THEREFORE, I, KATHLEEN BABINEAUX BLANCO, Governor of the state of Louisiana, by virtue of the authority vested by the Constitution and the laws of the state of Louisiana, do hereby order and direct as follows:

SECTION 1: The bond issue, as described in this Section, shall be and is hereby granted an allocation from the 2007 Ceiling in the amount shown:

Amount of Allocation	Name of Issuer	Name of Project
\$50,000,000	Lafayette Public Trust Financing Authority	Single Family Mortgage Revenue Bonds

SECTION 2: The allocation granted herein shall be used only for the bond issue described in Section 1 and for the general purpose set forth in the "Application for Allocation of a Portion of the State of Louisiana Private Activity Bond Ceiling" submitted in connection with the bond issue described in Section 1.

SECTION 3: The allocation granted herein shall be valid and in full force and effect through December 31,

2007, provided that such bonds are delivered to the initial purchasers thereof on or before December 29, 2007.

SECTION 4: All references in this Order to the singular shall include the plural, and all plural references shall include the singular.

SECTION 5: This Order is effective upon signature and shall remain in effect until amended, modified, terminated, or rescinded by the governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 29th day of October, 2007.

Kathleen Babineaux Blanco  
Governor

ATTEST BY  
THE GOVERNOR  
Jay Dardenne  
Secretary of State  
0711#089

### EXECUTIVE ORDER KBB 07-27

Louisiana Abraham Lincoln Bicentennial Commission

WHEREAS, the national Abraham Lincoln Bicentennial Commission was created by Congress in 2000 to inform the public about the impact of Abraham Lincoln had on the development of our great nation and to find the best possible ways to honor his accomplishments;

WHEREAS, the official public bicentennial commemoration launches February 2008, and closes February 2010, with the capstone taking place on February 12, 2009, the two hundredth (200th) anniversary of Lincoln's birth;

WHEREAS, the national Commission has invited states to participate in honoring Abraham Lincoln and to coordinate their own bicentennial programs and events; and

WHEREAS, it is necessary to create a state Commission to ensure Louisiana's participation in this nationwide commemoration of one of our country's greatest leaders.

NOW THEREFORE I, KATHLEEN BABINEAUX BLANCO, Governor of the state of Louisiana, by virtue of the authority vested by the Constitution and laws of the state of Louisiana, do hereby order and direct as follows:

SECTION 1: The Louisiana Abraham Lincoln Bicentennial Commission (hereafter Commission) is hereby established within the Department of State.

SECTION 2: The duties of the Commission shall include, but are not limited to, the following:

A. Develop, plan and coordinate statewide events that educate the public about the life and presidency of Abraham Lincoln as well as celebrate his many accomplishments.

B. Assist the state liaison to the national Commission in overseeing and directing preparations for statewide programs and events, including, but not limited to, supporting staff members in publicity and coordination efforts.

C. Develop and evaluate the effectiveness of programs and curricula which inform and educate citizens

about Abraham Lincoln and, particularly, the historical time period encompassing his presidency. Such programs may include:

1. Museum exhibits of artifacts;
2. Displays of artwork and photography with appropriate historical themes;
3. Concerts of music and performances of short and long plays;
4. Traditional festivals;
5. Storytelling and oral history projects;
6. Re-enactments; and
7. Dissemination of brochures, posters, t-shirts and other merchandise.

SECTION 3: On or before March 1 of year each year the Commission shall submit a written comprehensive report annually to the governor, the lieutenant governor, and the secretary of state on the issues set forth in Section 2 of this Order.

#### SECTION 4:

A. The Commission shall be composed of thirteen (13) members, as follows:

1. The Louisiana State Liaison to the national Abraham Lincoln Bicentennial Commission Governors' Council;
2. The Governor or the Governor's designee;
3. The Lieutenant Governor or the Lieutenant Governor's designee;
4. The Secretary of State or the Secretary's designee;
5. The Director of the State Museum, Department of Culture, Recreation and Tourism;
6. The State Museums Program Coordinator, Department of State;
7. The State Librarian, Department of Culture, Recreation and Tourism;
8. The State Archivist, Department of State;
9. One member of the House of Representatives appointed by the Speaker of the House of Representatives;
10. One member of the Senate appointed by the President of the Senate; and
11. Three (3) members appointed by the Governor.

SECTION 5: The chair of the Commission shall be the Louisiana State Liaison to the national Abraham Lincoln Bicentennial Commission Governors Council. All other officers, if any, shall be elected by the membership of the Commission.

SECTION 6: The Commission shall meet at regularly scheduled meetings and at the call of the chair.

#### SECTION 7:

A. Commission members shall not receive compensation or a per diem for their service on the Commission.

B. Commission members who are employees or elected public officials of the state of Louisiana or a political subdivision thereof may seek reimbursement of travel expenses from their agency or department in accordance with PPM 49.

SECTION 8: Support staff, facilities, and resources for the Commission shall be provided by the Department of State.

SECTION 9: All departments, commissions, boards, offices, entities, agencies, and officers of the state of

Louisiana, or any political subdivision thereof, are authorized and directed to cooperate with the Commission in implementing the provisions of this Order.

SECTION 10: This Order is effective upon signature and shall continue in effect until amended, modified, terminated, or rescinded by the governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 1st day of November, 2007.

Kathleen Babineaux Blanco  
Governor

ATTEST BY  
THE GOVERNOR  
Jay Dardenne  
Secretary of State  
0711#090

### EXECUTIVE ORDER KBB 07-28

Homeland Security and Emergency Preparedness Advisory Council—Amend Executive Order No. KBB 07-14

WHEREAS, Executive Order No. KBB 2007-14, issued on May 31, 2007, established a reconstituted and strengthened Homeland Security and Emergency Preparedness Advisory Council and rescinded Executive Order No. KBB 2004-36, issued August 20, 2004, which created the Homeland Security Advisory Council, and Executive Order No. KBB 2005-01, issued January 4, 2005, which expanded its membership; and

WHEREAS, it is necessary to amend Executive Order No. KBB 2007-14 in order to modify the membership of the Council;

NOW THEREFORE I, KATHLEEN BABINEAUX BLANCO, Governor of the state of Louisiana, by virtue of the authority vested by the Constitution and laws of the state of Louisiana, do hereby order and direct as follows:

SECTION 1: Section 4 of Executive Order No. KBB 2007-14, issued on May 31, 2007, is amended as follows:

A. The Council shall be composed of the following twelve (12) members:

B. Director of the Governor's Office of Homeland Security and Emergency Preparedness, or the director's designee;

C. Adjutant general of the Louisiana National Guard, or the adjutant general's designee;

D. Chair of the Senate Select Committee on Homeland Security, or the chair's designee;

E. Chair of the House Special Committee on Louisiana Homeland Security, or the chair's designee;

F. Secretary of the Department of Health and Hospitals, or the secretary's designee;

G. Superintendent of the Louisiana State Police, or the superintendent's designee;

H. Secretary of the Department of Social Services, or the secretary's designee;

I. Secretary of the Department of Transportation and Development, or the secretary's designee;

J. Secretary of the Department of Wildlife and Fisheries, or the secretary's designee;

K. Secretary of the Department of Corrections, or the secretary's designee;

L. Secretary of the Department of Environmental Quality, or the secretary's designee;

M. Attorney general of Louisiana, or the attorney general's designee.

SECTION 2: All other sections, subsections, and paragraphs of Executive Order No. KBB 2007-14, issued on May 31, 2007, shall remain in full force and effect.

SECTION 3: This Order is effective upon signature and shall continue in effect until amended, modified, terminated, or rescinded by the governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 1st day of November, 2007.

Kathleen Babineaux Blanco  
Governor

ATTEST BY  
THE GOVERNOR  
Jay Dardenne  
Secretary of State  
0711#091

### EXECUTIVE ORDER KBB 07-29

Bond Allocation—East Baton Rouge Mortgage Finance Authority

WHEREAS, pursuant to the Tax Reform Act of 1986 and Act 51 of the 1986 Regular Session of the Louisiana Legislature, Executive Order No. KBB 2005-12 was issued to establish:

(1) a method for allocating bonds subject to private activity bond volume limits, including the method of allocating bonds subject to the private activity bond volume limits for the calendar year of 2007 (hereafter "the 2007 Ceiling");

(2) the procedure for obtaining an allocation of bonds under the 2007 Ceiling; and

(3) a system of central record keeping for such allocations; and

WHEREAS, the East Baton Rouge Mortgage Finance Authority has requested an allocation from the 2007 Ceiling to provide owner-occupied single family residences for low and moderate income families throughout the parish of East Baton Rouge, Louisiana, in accordance with the provisions of Section 146 of the Internal Revenue Code of 1986, as amended;

NOW THEREFORE, I, KATHLEEN BABINEAUX BLANCO, Governor of the state of Louisiana, by virtue of the authority vested by the Constitution and the laws of the state of Louisiana, do hereby order and direct as follows:

SECTION 1: The bond issue, as described in this Section, shall be and is hereby granted an allocation from the 2007 Ceiling in the amount shown:

Amount of Allocation	Name of Issuer	Name of Project
\$42,000,000	East Baton Rouge Mortgage Finance Authority	Single Family Mortgage Revenue Bonds, Series 2007B

SECTION 2: The allocation granted herein shall be used only for the bond issue described in Section 1 and for the general purpose set forth in the "Application for Allocation of a Portion of the State of Louisiana's Private Activity Bond Ceiling" submitted in connection with the bond issue described in Section 1.

SECTION 3: The allocation granted herein shall be valid and in full force and effect through December 31, 2007, provided that such bonds are delivered to the initial purchasers thereof on or before December 29, 2007.

SECTION 4: All references in this Order to the singular shall include the plural, and all plural references shall include the singular.

SECTION 5: This Order is effective upon signature and shall remain in effect until amended, modified, terminated, or rescinded by the governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 6th day of November, 2007.

Kathleen Babineaux Blanco  
Governor

ATTEST BY  
THE GOVERNOR  
Jay Dardenne  
Secretary of State  
0711#092

**EXECUTIVE ORDER KBB 07-30**

Bond Allocation—Louisiana Housing Finance Agency

WHEREAS, pursuant to the Tax Reform Act of 1986 and Act 51 of the 1986 Regular Session of the Louisiana Legislature, Executive Order No. KBB 2005-12 was issued to establish:

(1) a method for allocating bonds subject to private activity bond volume limits, including the method of allocating bonds subject to the private activity bond volume limits for the calendar year of 2007 (hereafter "the 2007 Ceiling");

(2) the procedure for obtaining an allocation of bonds under the 2007 Ceiling; and

(3) a system of central record keeping for such allocations; and

WHEREAS, the Louisiana Housing Finance Agency has requested an allocation from the 2007 Ceiling to finance the acquisition, rehabilitation and equipping of the Spanish Arms Apartments, a 204 unit multifamily residential rental facility located on 7.37 acres at 4343 Denham Street, Baton Rouge, East Baton Rouge Parish, Louisiana, in accordance with the provisions of Section 146 of the Internal Revenue Code of 1986, as amended;

NOW THEREFORE, I, KATHLEEN BABINEAUX BLANCO, Governor of the state of Louisiana, by virtue of the authority vested by the Constitution and the laws of the state of Louisiana, do hereby order and direct as follows:

SECTION 1: The bond issue, as described in this Section, shall be and is hereby granted an allocation from the 2007 Ceiling in the amount shown:

Amount of Allocation	Name of Issuer	Name of Project
\$9,250,000	Louisiana Housing Finance Agency	Spanish Arms Apartments Series 2007

SECTION 2: The allocation granted herein shall be used only for the bond issue described in Section 1 and for the general purpose set forth in the "Application for Allocation of a Portion of the State of Louisiana's Private Activity Bond Ceiling" submitted in connection with the bond issue described in Section 1.

SECTION 3: The allocation granted herein shall be valid and in full force and effect through December 31, 2007, provided that such bonds are delivered to the initial purchasers thereof on or before December 29, 2007.

SECTION 4: All references in this Order to the singular shall include the plural, and all plural references shall include the singular.

SECTION 5: This Order is effective upon signature and shall remain in effect until amended, modified, terminated, or rescinded by the governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 6th day of November, 2007.

Kathleen Babineaux Blanco  
Governor

ATTEST BY  
THE GOVERNOR  
Jay Dardenne  
Secretary of State  
0711#093

**EXECUTIVE ORDER KBB 07-31**

Bond Allocation—Louisiana Housing Finance Agency

WHEREAS, pursuant to the Tax Reform Act of 1986 and Act 51 of the 1986 Regular Session of the Louisiana Legislature, Executive Order No. KBB 2005-12 was issued to establish:

(1) a method for allocating bonds subject to private activity bond volume limits, including the method of allocating bonds subject to the private activity bond volume limits for the calendar year of 2007 (hereafter "the 2007 Ceiling");

(2) the procedure for obtaining an allocation of bonds under the 2007 Ceiling; and

(3) a system of central record keeping for such allocations; and

WHEREAS, the Louisiana Housing Finance Agency has requested an allocation from the 2007 Ceiling to finance the acquisition, rehabilitation and equipping of the Emerald Pointe Apartments, a 120 unit multifamily residential rental facility located on 5.76 acres at 4254 Fifth Avenue, Lake Charles, Calcasieu Parish, Louisiana, in accordance with the provisions of Section 146 of the Internal Revenue Code of 1986, as amended;

NOW THEREFORE, I, KATHLEEN BABINEAUX BLANCO, Governor of the state of Louisiana, by virtue of the authority vested by the Constitution and the laws of the state of Louisiana, do hereby order and direct as follows:

SECTION 1: The bond issue, as described in this Section, shall be and is hereby granted an allocation from the 2007 Ceiling in the amount shown:

<b>Amount of Allocation</b>	<b>Name of Issuer</b>	<b>Name of Project</b>
\$4,680,000	Louisiana Housing Finance Agency	Emerald Pointe Apartments Series 2007

SECTION 2: The allocation granted herein shall be used only for the bond issue described in Section 1 and for the general purpose set forth in the "Application for Allocation of a Portion of the State of Louisiana's Private Activity Bond Ceiling" submitted in connection with the bond issue described in Section 1.

SECTION 3: The allocation granted herein shall be valid and in full force and effect through December 31, 2007, provided that such bonds are delivered to the initial purchasers thereof on or before December 29, 2007.

SECTION 4: All references in this Order to the singular shall include the plural, and all plural references shall include the singular.

SECTION 5: This Order is effective upon signature and shall remain in effect until amended, modified, terminated, or rescinded by the governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 6th day of November, 2007.

Kathleen Babineaux Blanco  
Governor

ATTEST BY  
THE GOVERNOR  
Jay Dardenne  
Secretary of State  
0711#094

# Emergency Rules

## DECLARATION OF EMERGENCY

### Student Financial Assistance Commission Office of Student Financial Assistance

Scholarship/Grant Programs—Prevention of Financial Peril  
(LAC 28:IV.301, 505, 1101, 1103, 1107,  
1201-1213, 1301, 1401-1419, 1701)

The Louisiana Student Financial Assistance Commission (LASFAC) is exercising the emergency provisions of the Administrative Procedure Act [R.S. 49:953(B)] to amend and re-promulgate the rules of the Scholarship/Grant programs [R.S. 17:3021-3025, R.S. 3041.10-3041.15, and R.S. 17:3042.1.1-3042.8, R.S. 17:3048.1, R.S. 56:797.D(2)].

This Emergency Rule is necessary to implement changes to the Scholarship/Grant programs to allow the Louisiana Office of Student Financial Assistance and state educational institutions to effectively administer these programs. A delay in promulgating Rules would have an adverse impact on the financial welfare of the eligible students and the financial condition of their families. LASFAC has determined that this Emergency Rule is necessary in order to prevent imminent financial peril to the welfare of the affected students.

This Declaration of Emergency is effective October 17, 2007, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act. (SG0891E)

#### Title 28

#### EDUCATION

#### Part IV. Student Financial Assistance—Higher Education Scholarship and Grant Programs

#### Chapter 3. Definitions

#### §301. Definitions

A. Words and terms not otherwise defined in these rules shall have the meanings ascribed to such words and terms in this Section. Where the masculine is used in these rules, it includes the feminine, and vice versa; where the singular is used, it includes the plural, and vice versa.

\* \* \*

#### Louisiana Resident—

a. - g.iv. ...

h. For any dependent student graduating from an out-of-state high school during the 2006-2007 academic year (high school) whose parent or court-ordered custodian was a member of the United States armed forces who, in the year 2006, moved from Louisiana under permanent change of station orders and retired from the armed forces, and changed his military personnel records to reflect a change of his state of legal residence from Louisiana to another state, shall meet the requirements of this Item, provided that such parent or court-ordered custodian changes his military personnel records from the other state to reestablish Louisiana as his state of legal residence no later than July 1, 2007, and has filed a Louisiana state income tax return for the two years preceding the date of the dependent's graduation from high school.

*Merit Ranking Formula*—a mathematical equation incorporating selected merit factors that is used to rank eligible applicants in the priority by which initial competitive scholarships are to be awarded. As of July 1, 1997, the TOPS Teacher Award and Rockefeller State Wildlife Scholarship are the only programs in which applicants are competitively ranked. The following formulas for the merit ranking of scholarship applicants provide for the equating of scores for high school graduating seniors and college students.

a. Formula I—applies to applicants for the Rockefeller State Wildlife Scholarship with less than 24 hours of graded college credit and to applicants for the TOPS Teacher Award with less than 48 hours of graded college credit:

$$\text{Merit Score} = \left( \left( \frac{\text{HSGPA}}{4.00} \right) \times 60 \right) + \left( \left( \frac{\text{ACT}}{36} \right) \times 40 \right)$$

b. Formula IA—applies to applicants for the Rockefeller State Wildlife Scholarship who are qualified home study completers with less than 24 hours of graded college credit:

$$\text{Merit Score} = \left( \frac{\text{ACT}}{36} \right) \times 100$$

c. Formula II—applies to applicants for the Rockefeller State Wildlife Scholarship with 24 or more hours of graded college credit and to applicants for the TOPS Teacher Award with 48 or more hours of graded college credit:

$$\text{Merit Score} = \left( \left( \frac{\text{College GPA}}{4.00} \right) \times 90 \right) + \left( \left( \frac{\text{College Level}}{4} \right) \times 10 \right)$$

d. Formula III—applies to applicants for the TOPS Teacher Award. For those applicants majoring in math or chemistry, an additional 10 points are added to the merit score determined by Formula I or II, resulting in an adjusted merit score.

e. Applicants' merit scores are ranked in descending order with the applicant with the highest merit score ranked first. The number of applicants selected for award is dependent upon the amount of award funds available.

f. In the event of a tie, the eligible applicants will be ranked based on the following criteria in the order listed:

i. the applicant with more college hours earned;  
or

ii. the student with the highest ACT (or equivalent SAT) score.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3025, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), repromulgated LR 24:632 (April 1998), amended LR 24:1898 (October 1998), LR 24:2237 (December 1998), LR 25:256 (February 1999), LR 25:654 (April 1999), LR 25:1458 and 1460 (August 1999), LR 25:1794 (October 1999), LR

26:65 (January 2000), LR 26:688 (April 2000), LR 26:1262 (June 2000), LR 26:1601 (August 2000), LR 26:1993, 1999 (September 2000), LR 26:2268 (October 2000), LR 26:2752 (December 2000), LR 27:36 (January 2001), LR 27:284 (March 2001), LR 27:1219 (August 2001), repromulgated LR 27:1842 (November 2001), amended LR 27:1875 (November 2001), LR 28:45 (January 2002), LR 28:446 (March 2002), LR 28:772 (April 2002), LR 28:2330, 2331 (November 2002), LR 29:555 (April 2003), LR 29:879 (June 2003), LR 30:1159 (June 2004), LR 30:2015 (September 2004), LR 31:36 (January 2005), LR 31:3112 (December 2005), LR 33:86 (January 2007), LR 33:439 (March 2007), LR 33:1339 (July 2007), LR 34:

## **Chapter 5. Applications, Federal Grant Aid and ACT Test**

### **§505. Application Deadlines for High School Graduates and Home Study Completers of 2004 and Later and Eligible Non-Graduates**

A.1. - F.3.b. ...

4. All recipients of Louisiana Scholarship and Grant Programs other than TOPS and the Rockefeller Wildlife Scholarship Program must submit a renewal FAFSA for each academic year (college) the student enrolls.

G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), repromulgated LR 24:635 (April 1998), amended LR 24:1901 (October 1998), repromulgated LR 27:1847 (November 2001), amended LR 30:2017 (September 2004), LR 31:37 (January 2005), LR 32:2238 (December 2006), LR 33:83 (January 2007), LR 34:

## **Chapter 11. Rockefeller State Wildlife Scholarship**

### **§1101. General Provisions**

A.1. - C.2. ...

3. The award is disbursed:

a. at postsecondary institutions using semesters at the rate of \$500 each fall and spring semester; or

b. at postsecondary institutions using terms at the rate of \$333 for the fall and winter term and of \$334 for the spring term.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), repromulgated LR 24:639 (April 1998), amended LR 24:1908 (October 1998), repromulgated LR 27:1859 (November 2001), amended LR 34:

### **§1103. Establishing Eligibility**

A. - A.2. ...

3.a. through the 2007-2008 academic year (college), submit the completed Free Application for Federal Student Aid (FAFSA) or the Renewal FAFSA, whichever is applicable to the student, so that it is received by the federal processor by the final deadline set forth in §501.C or §505.F; or

b. beginning with the 2008-2009 academic year (college):

i. to be eligible for the scholarship for both fall and spring semesters of the academic year (college), submit the completed Free Application for Federal Student Aid (FAFSA) or the Renewal FAFSA, whichever is applicable to the student, so that it is received by the federal processor and by LOSFA by the final deadline set forth in §501.C or §505.F;

ii. to be eligible for the scholarship, if funds are available, for the spring semester of the academic year (college), submit the completed Free Application for Federal Student Aid (FAFSA) or the Renewal FAFSA, whichever is applicable to the student, so that it is received by the federal processor by the final deadline set forth in §501.C or §505.F; and

4.a. through the 2007-2008 academic year (college), complete and submit such documentary evidence as may be required by LOSFA; or

b. beginning with the 2008-2009 academic year, complete and submit such documentary evidence as may be required by LOSFA so that it is received by LOSFA no later than July 1 preceding the academic year (college) for which the scholarship is sought; and

5. beginning with the 2008-2009 academic year:

a. to be eligible for the scholarship for both fall and spring semesters of the academic year (college), complete and submit the Rockefeller Wildlife Scholarship Application and a master promissory note so that they are received by LOSFA no later than July 1 preceding the fall semester for which the scholarship is sought; or

b. to be eligible for the scholarship, if funds are available for the spring semester of the academic year (college), complete and submit the Rockefeller Wildlife Scholarship Application and a master promissory note so that they are received by LOSFA no later than December 1 immediately preceding the spring semester for which the scholarship is sought; and

6. - 9.b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1 R.S. 17:3048.1 and R.S. 56:797.D(2).

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:639 (April 1998), amended LR 24:1908 (October 1998), LR 27:1220 (August 2001), repromulgated LR 27:1859 (November 2001), amended LR 28:774 (April 2002), LR 29:125 (February 2003), LR 30:2020 (September 2004), LR 33:87 (January 2007), LR 34:

### **§1107. Maintaining Eligibility**

A. - A.3. ...

4. continue to enroll as a full time student each subsequent semester or quarter (excluding summer sessions and intersessions) at the same institution unless granted an exception for cause and/or approval for transfer of the award by LASFAC; and

5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1, R.S. 17:3048.1 and R.S. 56:797.D(2).

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), repromulgated LR 24:640 (April 1998), amended LR 24:1909 (October 1998), repromulgated LR 27:1859 (November 2001), amended LR 31:2215 (September 2005), LR 34:

## **Chapter 12. Louisiana GO Grant**

### **§1201. General Provisions**

A. Authority

1. In accordance with the requirements of Act 695 of the 2004 Regular Session of the Legislature, the Board of Regents developed the GO Grant Program. The program was reviewed and approved by both the Senate Committee on

Education and the House Committee on Education on April 12, 2007.

2. The Louisiana GO Grant Program is administered by the Louisiana Office of Student Financial Assistance in accordance with the approved program and a memorandum of understanding by and between the Louisiana Board of Regents and the Louisiana Student Financial Assistance Commission.

B. Description, History and Purpose. The Louisiana GO Grant assists those students who can demonstrate financial need to pay for the cost of postsecondary education. The GO Grant is used to pay a portion of the cost of attendance at an eligible Louisiana institution.

C. Maximum Award Amount

1. The maximum annual award for any student is \$2,000 per academic year.

2. The annual award amount for students who enroll less than full time shall be reduced based on the maximum amount for which the eligible Louisiana institution is authorized to submit a payment request in §1211.C.2.

3. The maximum total lifetime award amount for any student is \$10,000.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3023 and R.S. 17:3129.7.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 34:

**§1203. Definitions**

A. The following definitions shall be applicable to the Louisiana GO Grant Program. Words and terms not otherwise defined in this Chapter shall have the meanings ascribed to such words and terms in this Section. Where the masculine is used in these rules, it includes the feminine, and vice versa; where the singular is used, it includes the plural, and vice versa.

*Academic Year*—the academic year begins with the fall semester or term of the award year, includes the winter term, if applicable, and concludes with the completion of the spring semester or term of the award year. Summer terms may be included in the academic year if the post-secondary institution provides students with Pell grants or financial need grants during the summer session, in which case, the academic year culminates with the summer session.

*Administering Agency*—the Louisiana Student Financial Assistance Commission through the Louisiana Office of Student Financial Assistance or LOSFA.

*Age*—a student's age is calculated by subtracting his birth year from the academic begin year he begins college enrollment. For example, a student who is born in 1983 who enrolls in college during the fall semester of 2007 or the spring semester of 2008 is 24.

*Cost of Attendance*—the total cost for a student to attend a particular postsecondary institution, usually expressed as an academic year figure. This cost shall be determined by the postsecondary institution attended in compliance with Title IV of the Higher Education Act of 1965, as amended, and shall be annually updated and adopted by the institution.

*Credit-bearing Course*—a course in which postsecondary education credit is attempted.

*Dependent Student*—a student who does not qualify as an independent student and is deemed to be dependent on his parents for support and therefore is required to include

parental information on the Free Application for Federal Student Aid (FAFSA) or renewal FAFSA.

*Education Allowance*—\$2,000 per academic year.

*Education Cost Gap (ECG)*—

a. for eligible Louisiana institutions, except a Louisiana public college that has been granted regional Candidacy Status and is eligible to participate in the Go Grant Program, the Louisiana Basic College Costs (LBCC) minus the federal Pell grant amount for a full time student;

b. for a Louisiana public college that has been granted regional Candidacy Status and is eligible to participate in the Go Grant Program, the Louisiana Basic College Costs (LBCC) minus the financial need grant amount at that institution for a full time student.

*Eligible Louisiana Institution*—Louisiana public colleges or universities and regionally accredited independent colleges or universities in the state that are members of the Louisiana Association of Independent Colleges and Universities and a Louisiana public college that has been granted regional Candidacy Status, but is not yet eligible to participate in Title IV programs, may award students a GO Grant. Candidacy Status institutions must require students to complete a FAFSA and the institution must determine a student's eligibility in accordance with rules under this chapter.

*Enrollment*—registration in programs of study at a postsecondary institution.

*Expected Family Contribution (EFC)*—an amount, determined by a formula established by Congress, that indicates how much of a family's financial resources should be available to help pay for the student's cost of attendance. Factors such as taxable and nontaxable income, assets (such as savings and checking accounts), and benefits (for example, unemployment or Social Security) are all considered in this calculation.

*Federal Pell Grant*—the Pell Grant provided under Title IV of the Higher Education Act of 1965, as amended.

*Financial Need*—the student's cost of attendance minus the expected family contribution (EFC) minus any estimated financial assistance not received under Title IV of the Higher Education Act as amended.

*Financial Need Grant*—an institutional grant provided by the state for students with financial need as evidenced by the data reported on the FAFSA at a Louisiana public college that has been granted regional candidacy status and is eligible to participate in the Go Grant Program.

*First-Time Freshman*—a student who, after high school graduation, has never attended any postsecondary institution, and those students enrolled in the fall term who attended college for the first time in the prior summer term after high school graduation and students who entered with advanced standing (college credits earned before graduation from high school).

*Full Time*—a student enrolled in an eligible Louisiana institution who is considered program full time by the school, or is enrolled in at least 12 semester credit hours, or 8 hours at a term school.

*Go Grant Award Amount*—the award amount actually paid during an academic year.

*Half Time*—a student enrolled in an eligible Louisiana institution who is not full time but is enrolled in at least six semester credit hours, or four hours at a term school.

*Independent Student*—a student who meets at least one of the criteria listed in Subparagraphs a-f or has been determined independent by a financial aid officer exercising professional judgment in accordance with applicable provisions of the Higher Education Act of 1965, as amended:

- a. reached 24 years of age prior to January of the year preceding the academic year for which the student is applying for aid;
- b. is currently serving on active duty for purposes other than training or is a veteran of the U.S. Armed Forces, including a student who was activated to serve in Operation Desert Storm;
- c. is an orphan or a ward of the court or was a ward of the court until age 18;
- d. has legal dependents other than a spouse;
- e. is a graduate or professional student;
- f. is married.

*Less Than Half Time* — A student enrolled in an eligible Louisiana institution who is not full time and is enrolled in less than six semester credit hours or four hours at a term school.

*Louisiana Basic College Costs (LBCC)*—

- a. for students enrolled at eligible Louisiana public institutions, the tuition and mandatory fees that are assessed a full time student for enrollment during the academic year at that institution, not including summer semesters or sessions, as approved on a yearly basis by the Louisiana Board of Regents, plus the education allowance;
- b. for students enrolled at regionally accredited independent colleges or universities in the state that are members of the Louisiana Association of Independent Colleges and Universities, the average tuition and mandatory fees for full time students at the four year eligible Louisiana public institutions, plus the education allowance.

*Louisiana Resident*—

- a. a dependent or independent student whose true, fixed, and permanent home of residence is Louisiana as reported on the Free Application for Federal Student Aid (FAFSA);
- b. a dependent student whose non-custodial parent completes a residency affidavit in subparagraph e below that establishes Louisiana residency;
- c. a dependent student whose parent is transferred out of Louisiana temporarily by his/her employer and that parent completes a residency affidavit in subparagraph e below that establishes Louisiana residency;
- d. a dependent student whose parent is on active duty in the Armed Forces and who is stationed in Louisiana under permanent change of station orders, or an independent student who is on active duty military status in the Armed Forces and is stationed in Louisiana under permanent change of station orders;
- e. if the dependent or independent student does not report Louisiana as his true, fixed, and permanent home of residence as Louisiana on the FAFSA, the administering agency may require an independent student applicant or the parent of a dependent student applicant to show proof of residency. Residency may be established by completion of a standard affidavit developed by the administering agency. Such affidavits must be completed in their entirety by the independent student applicant or by at least one parent of the

dependent student applicant and be sworn to and notarized by a licensed notary public. Further, the affiant shall be required to submit records in support of the affidavit to include the following records and such other records as may be required by the administering agency:

- i. if registered to vote, a Louisiana voter registration card; and
- ii. if licensed to drive a motor vehicle, a Louisiana driver's license; and
- iii. if owning a motor vehicle located in Louisiana, a Louisiana registration for that vehicle; and
- iv. if earning a reportable income, a Louisiana tax return;
- f.i. a displaced student who has been certified by the principal or headmaster to have graduated during the 2006-2007 school year from an out-of-state high school that meets the criteria of an eligible out-of-state high school as provided in §1701.A.4 and 5 and receives a Louisiana Distance Diploma from the Board of Elementary and Secondary Education is a Louisiana Resident for the purposes of this Chapter if:

(a). such dependent or independent student actually resided in Louisiana during his entire 10th grade year of high school and was enrolled for such time in an eligible Louisiana high school; or

(b). such dependent student has a parent or court-ordered custodian who actually resided in a parish listed in Subclause f.ii.(a). below for at least the 12 months prior to August 26, 2005, or in a parish listed in Subclause f.ii.(b). below for at least the 12 months prior to September 20, 2005;

ii. for the purposes of this Subsection, *displaced student* means:

(a). a student who on August 26, 2005, was actually residing in Jefferson, Lafourche, Orleans, Plaquemines, St. Bernard, St. Tammany, Tangipahoa, or Washington Parish; and

(i). was enrolled in an eligible Louisiana high school as provided in §1701.A.1, 2 and 3; or

(ii). was enrolled in a home study program approved by the State Board of Elementary and Secondary Education; or

(b). a student who on September 20, 2005, was actually residing in Acadia, Allen, Beauregard, Calcasieu, Cameron, Iberia, Jefferson Davis, St. Mary, Terrebonne, or Vermilion Parish; and

(i). was enrolled in an eligible Louisiana high school as provided in §1701.A.1, 2 and 3; or

(ii). was enrolled in a home study program approved by the State Board of Elementary and Secondary Education.

*Over Award*—an over award occurs when a student receives financial aid in excess of his financial need or the cost of attendance of an award under state programs to which the student was not entitled.

*Postsecondary Institution*—an institution which has as its sole purpose or one of its primary missions the provision of postsecondary education. Postsecondary education is the provision of a formal instructional program whose curriculum is designed primarily for students beyond the compulsory age for high school. This includes programs whose purpose is academic, vocational, and continuing

professional education, and excludes adult basic education programs.

*Program Full Time*—a student is enrolled in a degree program at an eligible Louisiana institution that the institution defines full-time as less than 12 hours per semester or eight hours per term.

*Satisfactory Academic Progress*—a standard established in accordance with the Higher Education Act of 1965, as amended, by the institution at which a GO Grant recipient is enrolled for measuring a student's progress in his or her educational program.

*Undergraduate Program*—a program of study that is designed to lead to a certificate or undergraduate degree.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3023 and R.S. 17:3129.7.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 34:

### **§1205. Application and Initial Eligibility**

A. Application. A student must complete the Free Application for Federal Student Aid for the year during which he intends to enroll in college.

B. Initial Eligibility. In order to be eligible for a Louisiana GO Grant, a student must:

1. be a Louisiana resident; and
2. receive a federal Pell grant or a financial need grant; and
3. have an Education Cost Gap (ECG) greater than \$0; and
- 4.a. be a first time freshman who entered college during the 2007-2008 academic year or later; or
- b. have entered college as a first time freshman during the 2007-2008 academic year or later and have become eligible for a federal Pell grant or a financial need grant after the freshman year; or
- c. be age 25 or older and have entered college as a first time freshman before the 2007-2008 academic year and have had a break in enrollment of at least two consecutive semesters, not including a summer semester or term, immediately preceding the period of enrollment for which the student is being considered for receipt of a grant under this Chapter.

C. In order to receive a grant under this Chapter, an eligible student must be enrolled in an undergraduate program at an eligible Louisiana institution through the 14th class day (9th class day at quarter and term schools).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3023 and R.S. 17:3129.7.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 34:

### **§1207. Continuing Eligibility**

A. Application. A student must complete the Free Application for Federal Student Aid or the Renewal Application for each year he enrolls in college to be considered for a Pell grant and the Go Grant.

B. A student's eligibility will be reevaluated on the same schedule as eligibility for a federal Pell grant or a financial need grant is determined at the institution, but at least once annually.

1. The student must continue to receive the federal Pell grant or a financial need grant.

2. The student must still have an education cost gap greater than \$0 as determined using the ECG formula.

3. The student must have maintained satisfactory academic progress as defined by the institution in which he is enrolled in accordance with the Higher Education Act of 1965.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3023 and R.S. 17:3129.7.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 34:

### **§1209. Eligibility of Louisiana Postsecondary Institutions**

#### **A. Eligible Louisiana Institutions**

1. Eligible public Louisiana institutions that provide undergraduate programs.

2. Regionally accredited private colleges and universities that are members of the Louisiana Association of Independent Colleges and Universities, Inc. (LAICU). As of July 2007, LAICU membership included Centenary College, Dillard University, Louisiana College, Loyola University, New Orleans Baptist Theological Seminary, Our Lady of the Lake College, Our Lady of Holy Cross College, St. Joseph Seminary College, Tulane Medical Center, Tulane University and Xavier University.

#### **B. Audits**

1. Eligible Louisiana institutions that participate in the Louisiana GO Grant program grant LOSFA and the Louisiana legislative auditor the right to inspect records and perform on-site audits of each institution's administration of the program for the purpose of determining the institution's compliance with state law and applicable rules and regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3023 and R.S. 17:3129.7.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 34:

### **§1211. Responsibilities of Eligible Louisiana Institutions**

#### **A. Initial Eligibility**

1.a. Eligible Louisiana institutions must determine whether the student meets the criterion in Subparagraph a of the definition of Louisiana resident in §1203.

b. If this criterion is not met, the student may request that LOSFA make a determination of residency under Subparagraph e of the definition of Louisiana resident in §1203.

2. Eligible Louisiana institutions must determine whether a student meets the initial eligibility criteria enumerated in §1205.B.2-4.

B. Continuing Eligibility. Eligible Louisiana institutions must determine whether a student meets the continuing eligibility criteria enumerated in §1207 on the same schedule as eligibility for a Pell grant or a financial need grant is determined at the institution, but at least once annually.

C. Submission of Payment Requests. Each semester or term, eligible Louisiana institutions shall submit a payment request to LOSFA for students enrolled at the institution who have been determined eligible for a Louisiana GO Grant as follows:

1. for each student eligible for a Louisiana GO Grant who is enrolled at the end of the 14th class day for semester schools, or the 9th class day for quarter and term schools, or for any qualifying summer sessions, at the end of the last day to drop and receive a full refund for the full summer session;

2. payment request amount:

a. \$1,000 per semester for a student enrolled full time after the 14th class day in an eligible Louisiana institution that operates on a semester basis or \$667 (\$666 for the final term of the award year) per term for a student enrolled full time after the 9th class day in an eligible Louisiana institution that operates on a term basis;

b. \$500 per semester for a student enrolled half time after the 14th class day in an eligible Louisiana institution that operates on a semester basis or \$333 (\$334 for the final term) per term for a student enrolled half time after the 9th class day in an eligible Louisiana institution that operates on a term basis;

c. \$250 per semester for a student enrolled less than half time after the 14th class day in an eligible Louisiana institution that operates on a semester basis or \$167 (or \$166 for the final term) per term for a student enrolled half time after the 9th class day in an eligible Louisiana institution that operates on a term basis;

d. for summer sessions, the difference between what the student was paid during the preceding fall semester or term, winter term, if applicable, and spring semester or term and the student's maximum annual award amount; provided the award for the summer session shall not exceed \$1,000;

3. the payment request shall include the social security number, college code, term, date, hours attempted, award amount, education cost gap and amount requested for each student;

4. for students who are enrolled in more than one eligible Louisiana institution, the home school (school paying the Pell grant or a financial need grant) is responsible for submitting a payment request for the Go Grant based on the total hours enrolled at all institutions.

#### D. Over Payments

1. No institution shall submit a payment request for GO Grant funds which would result in a student receiving an annual total of more than is authorized in §1201.C.

2. Eligible Louisiana institutions certify by submitting a payment request for a GO Grant that the institution will reimburse LOSFA for any award funds that are disbursed to ineligible students, in excess of the maximum annual award or in excess of the maximum lifetime award.

E. Over Award. In the event the student's total aid, including vocational rehabilitation awards, exceeds his financial need or the cost of attendance, any federal loan aid included in the total aid package shall be reduced, then institutional and other aid in accordance with institutional practice, then the Louisiana GO Grant, then a TOPS Award, if applicable, shall be reduced by the amount of any remaining over award.

F. Records Retention. Records pertaining to the payment requests for Louisiana GO Grants are subject to audit as required by LASFAC, the Louisiana Board of Regents, and the Louisiana Legislative Auditor. Eligible Louisiana institutions shall maintain all records for a minimum of three

years from creation. All such records shall be made available upon request by LASFAC, the Louisiana Board of Regents and/or the Louisiana Legislative Auditor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3023 and R.S. 17:3129.7.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 34:

### §1213. Responsibilities of LOSFA

A. LOSFA shall pay each eligible Louisiana institution an amount equal to that amount in a payment request by the eligible Louisiana institution in accordance with the provisions of §1211.C.

B. LOSFA shall determine the residency of students who do not meet the criteria enumerated in Subparagraph a of the definition of Louisiana Resident in §1203 and notify eligible Louisiana institutions of its determination(s).

C. LOSFA shall maintain a database of all students who have received the GO Grant, including social security number, college code, term, date, hours attempted, award amount, education cost gap amount, annual amount received, and aggregate amount received. In the event LOSFA receives a payment request for a student in an amount that would exceed the student's eligibility, LOSFA will pay only that amount that will not exceed the student's eligibility.

#### D. Adequacy of Funding

1. After the receipt of fall semester or term payment requests, but no later than October 15 of each year, LOSFA shall determine whether sufficient funds are available to pay all anticipated awards for subsequent semesters, terms and sessions of the academic year.

2. In the event projections indicate sufficient funds are not available, LOSFA shall notify the Board of Regents.

3. In the event additional funds are not allocated for payment of all anticipated awards for subsequent semesters, terms and sessions during the academic year, the Board of Regents shall develop, approve and deliver a plan to LOSFA to address the shortfall.

E. LOSFA shall audit eligible Louisiana institutions to ensure compliance with these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3023 and R.S. 17:3129.7.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 34:

## Chapter 13. Leveraging Educational Assistance Partnership (LEAP)

### §1301. General Provisions

A. - D. ...

E.1. Allocation of Funds. Annually, funds are allocated to post-secondary institutions based on school type, the school's prior year first-time, full-time enrollment of matriculating students and the amount of the prior year's allocation that was expended. Initial funds, for first-time recipients, are computed as a percentage of all participating institutions first-time, full-time enrollment as of October 10 of the prior fiscal year. A student's enrollment in an undergraduate degree granting school which is a component of a state supported medical center, shall be a first-time, full-time freshman for the purpose of this program. Continuation funds for students who had previously received LEAP are computed as a percentage of the allocated funds used during

the previous year. The continuation formula applies 60 percent for four-year schools and 40 percent for two-year schools. For the purpose of this paragraph "matriculating student" means a degree seeking student.

E.2 - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), repromulgated LR 24:641 (April 1998), amended LR 24:1910 (October 1998), LR 25:1458 (August 1999), repromulgated LR 27:1860 (November 2001), amended LR 28:2332 (November 2002), LR 32:2239 (December 2006), LR 33:440 (March 2007), LR 34:

## **Chapter 14. Dual Enrollment Program**

### **§1401. General Provisions**

A. The Dual Enrollment Program is administered by the Louisiana Office of Student Financial Assistance (LOSFA) in accordance with a memorandum of understanding by and between the Louisiana Board of Regents and the Louisiana Student Financial Assistance Commission (LASFAC).

B. Description, History and Purpose. The Dual Enrollment Program is established to provide funding to Louisiana public postsecondary institutions that enroll eligible 11th and 12th grade Louisiana public high school students in college degree, developmental, or work skills courses. The purpose of the Dual Enrollment Program is to provide an incentive for qualified Louisiana public high school students to prepare for a postsecondary education or career.

C. Effective Date. Dual Enrollment Program payments shall be made beginning with the 2007-2008 award year to postsecondary institutions for 11th and 12th grade students meeting the eligibility criteria set forth in this Chapter.

D. Eligible Semesters/Terms. The Dual Enrollment Program will pay for enrollment in each college course during each semester or term of the academic year. Dual Enrollment Program will not pay for summer semesters or sessions.

E. Award Amount. The Dual Enrollment Program will pay postsecondary institutions \$100 per college credit hour, not to exceed \$300 per course, for each course in which the student is eligible to enroll.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1, R.S. 17:3048.1 and R.S. 17:3048.5.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 34:

### **§1403. Definitions**

A. Words and terms not otherwise defined in this Chapter shall have the meanings ascribed to such words and terms in this Section. Where the masculine is used in these rules, it includes the feminine, and vice versa; where the singular is used, it includes the plural, and vice versa.

*Academic Year*—the academic year begins with the fall semester or term of the award year, includes the winter term, if applicable, and concludes with the completion of the spring semester or term.

*College Degree Course*—a course in an academic subject at a Louisiana postsecondary institution that generates postsecondary institutional credit and appears on the current Board of Regents' Statewide General Education Course Articulation Matrix.

*Enrichment/Developmental Course*—an English or mathematics course at a Louisiana postsecondary institution that generates postsecondary institutional credit, but not degree credit, and is designed to prepare the student for college-level instruction.

*Postsecondary Institution*—Louisiana public colleges or universities.

*Work Skills Course*—a course at a Louisiana postsecondary institution in a skill or occupational training area that is designed to lead to an industry-based certificate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1, R.S. 17:3048.1 and R.S. 17:3048.5.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 34:

### **§1405. Establishing Eligibility**

A. To establish eligibility for the Dual Enrollment Program, all student applicants must meet the following criteria:

1. be in the 11th or 12th grade in a Louisiana public high school;
2. be working towards and on track to complete the Regents/TOPS core curriculum by high school graduation;
- 3.a. have taken either the PLAN<sup>®</sup> or ACT assessment (or SAT) and those scores are on file at the high school; or  
b. for §1405.D only, students who do not have an ACT (or SAT) score and have been accepted by the postsecondary institution based on its written determination that a student was unable to take the PLAN<sup>®</sup> due to a natural disaster.
4. have completed and submitted a Dual Enrollment Program application to the high school in which the student is enrolled;
5. be approved by the high school in which the student is enrolled to participate in the program and to enroll in the course or courses; and
6. be enrolled in a course for which both high school and college credit is available and is for which a Dual Enrollment Program payment is made.

B. Enrollment in a College Degree Course. In addition to the eligibility criteria in Section A.1-6, a student must have a PLAN<sup>®</sup> or ACT (or an equivalent SAT):

1. composite score of at least 17 to enroll in a college degree course;
2. English sub-score of at least 18 or meet the postsecondary institution's pre-requisite requirement to enroll in an entry level English college degree course;
3. mathematics sub-score of at least 18 or meet the postsecondary institution's pre-requisite requirement to enroll in an entry level mathematics college degree course.

C. Enrollment in an Enrichment/Developmental Course. In addition to the eligibility criteria in Section A.1-6, a student must have a PLAN<sup>®</sup> or ACT (or an equivalent SAT):

1. composite score of at least 12 to enroll in an enrichment/developmental course;
2. English sub-score of at least 12 to enroll in an English enrichment/developmental course;
3. Mathematics sub-score of at least 12 to enroll in a mathematics enrichment/developmental course.

D. Enrollment in a Work Skills Course. In addition to the eligibility criteria in Section A.1-6, a student must have:

1. A PLAN<sup>®</sup> or ACT Composite score (or an equivalent SAT score) of at least 12; or

2. have no ACT or SAT score and have been accepted by the postsecondary institution based on its written determination that a student was unable to take the PLAN<sup>®</sup> due to a natural disaster.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3023 and R.S. 17:3129.7.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 34:

#### **§1407. Continuing Enrollment**

A. To continue enrollment in subsequent semesters/terms in the Dual Enrollment Program, the student must:

1. have successfully completed and earned credit in the last course(s) in which a student enrolled through the Dual Enrollment Program. If the student resigns or withdraws from a course, the student must receive permission from both the high school and college to continue enrollment in subsequent semesters/terms;

2. be in good standing at the postsecondary institution;

3. continue to meet eligibility requirements in §1405.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1, R.S. 17:3048.1 and R.S. 17:3048.5.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 34:

#### **§1409. Responsibilities of High Schools and School Boards**

A. The student's high school shall:

1. determine whether the student meets the initial eligibility criteria provided in §1405.A;

2. approve or disapprove the student's participation in the program;

3. approve the course or courses in which the student will enroll;

4. provide to the postsecondary institution at which the student will be dually enrolled:

a. the student's approved application; and

b. the student's PLAN and/or ACT test scores, including sub-scores on those tests required to enroll in specific courses as provided in §1405.B.-D.

B. By forwarding the student's application to the postsecondary institution, the student's high school certifies that it has determined that the student has met all criteria in §1405.A to participate in the Dual Enrollment Program and has approved the student's participation in the program and the course or courses in which the student will be enrolled.

C. Upon completion of the course, the high school shall include the high school course, units attempted, units earned, and course grade on the student's permanent high school transcript.

D. At the end of each semester or term of participation in the program, the student's high school shall determine whether the student has met the criterion in §1407.A.1 for continued enrollment in the Dual Enrollment Program. If the student is determined eligible and the high school approves the student's continued participation in the program, it shall so notify the postsecondary institution and provide the course or courses approved for enrollment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1, R.S. 17:3048.1 and R.S. 17:3048.5.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 34:

#### **§1413. Responsibilities of Louisiana Public Postsecondary Institutions**

A. Each Louisiana public postsecondary institution that participates in the Dual Enrollment Program shall:

1. be responsible for determining that the student meets the PLAN or ACT eligibility criteria provided in §1405.B-D;

2. reserve Dual Enrollment Program funds when the student is accepted and enrolled in an appropriate course;

3. submit a payment request to LOSFA for students enrolled at the institution for whom a reservation was made as follows:

a. for each student eligible for the Dual Enrollment Program who is enrolled at the end of the 14th class day or later for semester schools, or the 9th class day or later for quarter and term schools;

b. payment request amount. Each semester or term, the postsecondary institution in which a student is dually enrolled shall submit a payment request to LOSFA in the amount of \$100 per credit hour in which the student is enrolled, not to exceed \$300 for each college course;

c. the postsecondary institution may not charge the student any mandatory institutional and tuition fees for enrollment in a course paid for by the Dual Enrollment Program;

d. the payment request shall include the social security number, college code, high school code, term, date, college course type, hours attempted, and amount requested for each student;

4. for students who have been previously enrolled in the Dual Enrollment Program, determine whether the student is in good standing at that institution;

5. by submitting a payment request to LOSFA, the postsecondary institution certifies that:

a. the student meets the eligibility criteria provided in 1405.B-D for the college course in which the student is dually enrolled;

b. the student was enrolled at the end of the 14th class day or later for semester schools, or the 9th class day or later for quarter and term schools;

c. the student's high school has provided notice that the student is eligible for and has been approved to continue participation in the program; and

d. the student's high school has provided notice of the course or courses approved for enrollment;

e. the student is in good standing at the institution;

6. upon completion of the course, the postsecondary institution shall include the college course, credit attempted, credit earned, and course grade on the student's permanent postsecondary education transcript.

#### **B. Records Retention**

1. Records pertaining to the Dual Enrollment Program are subject to audit as required by LOSFA, LASFAC, the Louisiana Board of Regents, and the Louisiana Legislative Auditor. Postsecondary institutions shall maintain all records for a minimum of three years. All such records shall be made available upon request by LOSFA, LASFAC, the Louisiana Board of Regents and the Louisiana Legislative Auditor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1, R.S. 17:3048.1 and R.S. 17:3048.5.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 34:

**§1415. Responsibilities of the Board of Regents**

A. The Board of Regents shall provide a student application to participate in the Dual Enrollment Program.

B. The Board of Regents shall maintain a Statewide General Education Course Articulation Matrix.

C. In the event that the funds appropriated for the Dual Enrollment Program are insufficient to pay for all eligible students, the Board of Regents shall develop, approve and deliver a plan to LOSFA to address the shortfall.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1, R.S. 17:3048.1 and R.S. 17:3048.5.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 34:

**§1417. Responsibilities of LOSFA**

A. Upon receipt of payment requests from institutions submitted in accordance with §1413.A, LOSFA shall pay the institution for each eligible student in accordance with §1413.

B. LOSFA shall conduct audits of the participating Louisiana public postsecondary institutions to ensure compliance with program requirements.

C. LOSFA shall provide the information necessary to fully inform Louisiana public high school students and their parents on the requirements of and procedures for applying for and maintaining eligibility for the Dual Enrollment Program.

D. LOSFA shall audit high schools and postsecondary institutions to ensure compliance with these rules.

E. LOSFA shall maintain a database of all students who have participated in the Dual Enrollment Program, including social security number, college code, high school code, term, date, college course type, hours attempted, payment amount, and aggregate amount paid.

F.1. After the receipt of fall semester or term payment requests, but no later than October 15 of each year, LOSFA shall determine whether sufficient funds are available for all anticipated program payments for subsequent semesters and terms of the academic year.

2. In the event projections indicate sufficient funds are not available, LOSFA shall notify the Board of Regents.

3. In the event additional funds are not allocated for all program payments anticipated for subsequent semesters and terms during the academic year, the Board of Regents shall develop, approve and deliver a plan to LOSFA to address the shortfall.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3023 and R.S. 17:3129.7.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 34:

**§1419. Responsibilities of LASFAC**

A. LASFAC shall promulgate administrative rules in accordance with the Administrative Procedure Act, in consultation with the Louisiana Board of Regents and in accordance with a memorandum of understanding entered into by and between LASFAC and the Louisiana Board of Regents.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3023 and R.S. 17:3129.7.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 34:

**Chapter 17. Responsibilities of High Schools, School Boards, Special School Governing Boards, the Louisiana Department of Education and LASFAC on Behalf of Eligible Non-Louisiana High Schools**

**§1701. Eligibility of Graduates Based upon the High School Attended**

A. - A.4.a. ...

i. graduates of out-of-state high schools are eligible to participate in the Rockefeller State Wildlife Scholarship and the Leveraging Educational Assistance Partnership Program;

A.4.a.ii. - B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1, R.S. 17:3048.1, and R.S. 17:3050.1-3050.4.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), repromulgated LR 24:642 (April 1998), amended LR 24:1911 (October 1998), LR 25:849 (May 1999), LR 26:67 (January 2000), LR 26:1997 (September 2000), repromulgated LR 27:1862 (November 2001), amended LR 30:784 (April 2004), LR 30:1165 (June 2004), LR 34:

George Badge Eldredge  
General Counsel

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**DECLARATION OF EMERGENCY**

**Department of Environmental Quality  
Office of the Secretary**

Expedited Penalty Agreement  
(LAC 33:I.801 and 807, and VII.115 and 315)(M004E2)

In accordance with the emergency provisions of R.S. 49:953(B) of the Administrative Procedure Act, which allow the Department of Environmental Quality to use emergency procedures to establish rules, and of R.S. 30:2011, which allows the department to establish standards, guidelines, and criteria, to promulgate rules and regulations, and to issue compliance schedules, the secretary of the department hereby declares that an emergency action is necessary in order to implement expedited penalty agreements.

This is a renewal of and revision to Emergency Rule MM004E1 that adds certain additional violations of the solid waste regulations to LAC 33:I.807, and amends LAC 33:VII.115 and 315 accordingly, and which was effective on July 18, 2007, and published in the *Louisiana Register* on July 20, 2007. This version of the Emergency Rule (MM004E2) adds certain violations of the new underground storage tank (UST) delivery prohibition regulations; reorganizes the existing list of violations in order by citation; clarifies various existing violations; adjusts existing penalty amounts to be consistent across media for similar violations; and adds other waste tire, water quality, and UST violations.

The expedited penalty agreement rule, LAC 33:I.Chapter 8, became final on December 20, 2006. This Emergency Rule supplements that rule by adding certain violations to, and clarifying existing violations in, the types of violations that may qualify for expedited penalties. The Emergency Rule will abate delays that have occurred in correcting violations of the Environmental Quality Act concerning the unauthorized transporting, disposal, and/or burning of solid wastes and violations of the UST delivery prohibition rule required by the federal Underground Storage Tank Compliance Act of 2005. Delays in enforcement reduce the effectiveness of the enforcement action and unnecessarily utilize resources. In the recent past, complaints of unauthorized disposal and burning of solid wastes have increased considerably, especially in the hurricane-impacted areas. This Emergency Rule will provide an alternative penalty assessment mechanism that the department may utilize, at its discretion, to expedite penalty agreements in appropriate cases, reducing staff time and increasing efficiency in addressing such violations. The report to the Governor by the Advisory Task Force on Funding and Efficiency of the Louisiana Department of Environmental Quality has approved an expedited penalty approach. It recommended a pilot program for addressing certain classes of violations with penalties in a timelier manner. The legislature approved that report and passed Act 1196 in the 2003 Regular Session allowing the department to promulgate rules for the program. A pilot program was created and monitored for approximately two years. Positive feedback on the program led the department to promulgate the permanent expedited penalty agreement rule that became final on December 20, 2006.

This Emergency Rule is effective on November 15, 2007, and shall remain in effect for a maximum of 120 days or until a final rule is promulgated, whichever occurs first. For more information concerning MM004E2 you may contact the Regulation Development Section at (225) 219-3550.

This Emergency Rule is available on the Internet at [www.deq.louisiana.gov/portal/tabid/1669/default.aspx](http://www.deq.louisiana.gov/portal/tabid/1669/default.aspx), and is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 645 N. Lotus Drive, Suite C, Mandeville, LA 70471.

**Title 33**

**ENVIRONMENTAL QUALITY**

**Part I. Office of the Secretary**

**Subpart 1. Departmental Administrative Procedures**

**Chapter 8. Expedited Penalty Agreement**

**§801. Definitions**

\* \* \*

*LAR050000*—an LPDES multi-sector storm water general permit.

*LAR100000*—an LPDES storm water general permit associated with construction activity greater than five acres.

*LPDES General Permit*—for the purposes of this Chapter, any Louisiana Pollutant Discharge Elimination System Permit in the LAG530000, LAG540000, or LAG750000 series.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2025(D).

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 32:2242 (December 2006), amended by the Office of the Secretary, Legal Affairs Division, LR 34:

**§807. Types of Violations and Expedited Penalty Amounts**

A. The types of violations listed in the following table may qualify for coverage under this Chapter; however, any violation listed below, which is identified in an expedited penalty agreement, must also meet the conditions set forth in LAC 33:I.805.E.

Expedited Penalties			
Violation	Citation	Amount	Frequency
<b>ALL MEDIA</b>			
* * *			
[See Prior Text]			
<b>AIR QUALITY</b>			
Failure to timely submit any applicable Specific Condition or General Condition report as specified in a minor source permit.	LAC 33:III.501.C.4	\$250	Per occurrence
Failure to timely submit any applicable Specific Condition or General Condition report (other than those specified elsewhere in this Section) as specified in a Part 70 (Title V) air permit.	LAC 33:III.501.C.4	\$350	Per occurrence
40 CFR Part 70 General Permit conditions (Part K, L, M, or R): Failure to timely submit any applicable annual, semiannual, or quarterly reports.	LAC 33:III.501.C.4	\$500	Per occurrence
Failure to submit an updated Emission Point List, Emissions Inventory Questionnaire (EIQ), emissions calculations, and certification statement as described in LAC 33:III.517.B.1 within seven calendar days after effecting any modification to a facility authorized to operate under a standard oil and gas permit.	LAC 33:III.501.C.4	\$750	Per occurrence/ emission point
Failure to submit the Title V permit renewal application at least six months prior to the date of expiration, applicable only when the renewal application is submitted prior to permit expiration and a renewal permit is issued on or before the expiration date.	LAC 33:III.507.E.4	\$1,000	Per occurrence
Failure to provide notice of change of ownership within 45 days after the change.	LAC 33:III.517.G	\$200	Per occurrence

Expedited Penalties			
Violation	Citation	Amount	Frequency
Failure to submit an Annual Criteria Pollutant Emissions Inventory in a timely and complete manner when applicable.	LAC 33:III.919	\$500	Per occurrence
Control of Fugitive Emissions, sandblasting facilities: Failure to take all reasonable precautions to prevent particulate matter from becoming airborne.	LAC 33:III.1305.A	\$250	Per occurrence
Failure to maintain records for glycol dehydrators subject to LAC 33:III.2116.	LAC 33:III.2116.F	\$250	Per occurrence
Failure to submit an Annual Toxic Emissions Data Inventory in a timely and complete manner when applicable.	LAC 33:III.5107	\$500	Per occurrence
Failure to submit an initial perchloroethylene inventory report.	LAC 33:III.5307.A	\$250	Per occurrence
Failure to submit a perchloroethylene usage report by July 1 for the preceding calendar year.	LAC 33:III.5307.B	\$250	Per occurrence
Stage II Vapor Recovery			
Note: LAC 33:III.2132 is only applicable to subject gasoline dispensing facilities in the parishes of Ascension, East Baton Rouge, West Baton Rouge, Iberville, Livingston, and Pointe Coupee.			
Failure to use and/or diligently maintain, in proper working order, all air pollution control equipment installed at the site.	LAC 33:III.905	\$300	Per occurrence
Failure to submit an application to the administrative authority prior to installation of the Stage II vapor recovery system.	LAC 33:III.2132.B.6	\$500	Per occurrence
Failure to have at least one person trained as required by the regulations.	LAC 33:III.2132.C	\$300	Per occurrence
Failure to test the vapor recovery system prior to start-up of the facility and annually thereafter.	LAC 33:III.2132.D	\$750	Per occurrence
Failure to post operating instructions on each pump.	LAC 33:III.2132.E	\$100	Per occurrence
Failure to maintain equipment and tag defective equipment "out of order."	LAC 33:III.2132.F.1 and 3-4	\$500	Per inspection
Failure to perform daily inspections and accurately record results.	LAC 33:III.2132.F.2	\$300	Per inspection
Failure to maintain records on-site for at least two years and present them to an authorized representative upon request.	LAC 33:III.2132.G.1-7	\$200	Per compliance inspection

Expedited Penalties			
Violation	Citation	Amount	Frequency
HAZARDOUS WASTE			
Used Oil			
* * *			
[See Prior Text]			
SOLID WASTE			
Unauthorized on-site disposal of regulated solid waste generated at the site by the owner, lessee, or other person having an actual right, title, or interest in the property.	LAC 33:VII.315.C	\$250	Per occurrence
Unauthorized disposal of solid waste by the generator at an off-site location not permitted to receive such waste.	LAC 33:VII.315.C	\$250	Per occurrence
Operation of an unauthorized disposal site where solid waste is disposed.	LAC 33:VII.315.C	\$1,000	Per occurrence
An owner, lessee, or other person having an actual right, title, or interest in the property of an unauthorized disposal site in which solid waste is disposed.	LAC 33:VII.315.C	\$1,000	Per occurrence
Failure to report any discharge, deposit, injection, spill, dumping, leaking, or placing of solid waste into or on the water, air, or land.	LAC 33:VII.315.F	\$500	Per occurrence
Open burning of solid waste as prohibited by regulation.	LAC 33:VII.315.M	\$250	Per occurrence
Offering residential solid waste to an unauthorized transporter and/or facility not permitted to receive such waste.	LAC 33:VII.315.O	\$250	Per occurrence
Offering commercial solid waste and/or construction and demolition debris to an unauthorized transporter and/or a facility not permitted to receive such waste.	LAC 33:VII.315.O	\$500	Per occurrence
Offering industrial solid waste to an unauthorized transporter and/or a facility not permitted to receive such waste.	LAC 33:VII.315.O	\$750	Per occurrence
Transportation of solid waste to processing or disposal facilities not permitted to receive such waste.	LAC 33:VII.505.D	\$1,000	Per occurrence
Waste Tires			
Storage of more than 20 whole tires without authorization from the administrative authority.	LAC 33:VII.10509.B	\$200	Per occurrence
Transporting more than 20 tires without first obtaining a transporter authorization certificate.	LAC 33:VII.10509.C	\$300	Per occurrence

Expedited Penalties			
Violation	Citation	Amount	Frequency
Storing tires for greater than 365 days.	LAC 33:VII.10509.E	\$200	Per occurrence
Failure to maintain all required records for three years on-site or at an alternative site approved in writing by the administrative authority.	LAC 33:VII.10509.G, 10519.O and P	\$200	Per occurrence
Failure to obtain a waste tire generator identification number within 30 days of commencing business operations.	LAC 33:VII.10519.A	\$300	Per occurrence
Failure to accept one waste tire for every new tire sold unless the purchaser chooses to keep the waste tire.	LAC 33:VII.10519.B	\$100	Per occurrence
Failure to collect appropriate waste tire fee for each new tire sold.	LAC 33:VII.10519.C, 10521.B, 10535.B	\$200	Per occurrence
Failure to remit waste tire fees to the state on a monthly basis as specified.	LAC 33:VII.10519.D, 10521.C	\$200	Per occurrence
Failure to post required notifications to the public.	LAC 33:VII.10519.E, 10521.D	\$100	Per occurrence
Failure to list the waste tire fee on a separate line on the invoice so that no tax will be charged on the fee.	LAC 33:VII.10519.F, 10521.E	\$100	Per occurrence
Failure to keep waste tires or waste tire material covered as specified.	LAC 33:VII.10519.H, 10521.H	\$200	Per occurrence
Storing waste tires for more than 120 days without complying with the exceptions for the extended storage time.	LAC 33:VII.10519.I	\$200	Per occurrence
Failure to use an authorized transporter for removal of tires from a place of business.	LAC 33:VII.10519.K	\$500	Per occurrence
Failure to segregate waste tires from new or used tires offered for sale.	LAC 33:VII.10519.M	\$200	Per occurrence
Failure of motor vehicle dealer to notify administrative authority within 30 days of commencing business operations.	LAC 33:VII.10521.A	\$300	Per occurrence
Failure to submit application and fees for transporter authorization.	LAC 33:VII.10523.A	\$300	Per occurrence
Failure to use a manifest when transporting greater than 20 waste tires.	LAC 33:VII.10523.C	\$200	Per occurrence
Failure of transporter to transport all waste tires to an authorized collection center or a permitted processing facility.	LAC 33:VII.10523.D	\$300	Per occurrence
Failure of out-of-state or out-of-country transporter to comply with state waste tire regulations.	LAC 33:VII.10523.E	\$200	Per occurrence
Failure to affix to driver's door and passenger's door the authorization certificate number, 3 inches in height.	LAC 33:VII.10523.F	\$100	Per occurrence

Expedited Penalties			
Violation	Citation	Amount	Frequency
Failure to provide notification in writing within 10 days when any information on the authorization certificate form changes, or if the business closes and ceases transporting waste tires.	LAC 33:VII.10523.G	\$100	Per occurrence
Acceptance by a processor of more than five unmanifested tires per day per customer.	LAC 33:VII.10525.A.2	\$300	Per occurrence
Failure of a processor to maintain a log for all unmanifested loads.	LAC 33:VII.10525.A.2	\$200	Per occurrence
Failure to meet any of the facility standards listed in LAC 33:VII.10525.D.	LAC 33:VII.10525.D	\$300	Per occurrence
Failure by a collector or collection center to follow the requirements for receipt of tires.	LAC 33:VII.10527.A	\$200	Per occurrence
Failure of collection center operator to meet the standards in LAC 33:VII.10525.D.1-10 and 12-24.	LAC 33:VII.10527.B	\$300	Per occurrence
A collector or collection center exceeding the storage limit of waste tires or waste tire material.	LAC 33:VII.10527.C, 10531.C	\$300	Per occurrence
Failure of recycler to provide notification of its existence and obtain an identification number.	LAC 33:VII.10531.A	\$300	Per occurrence
Failure of waste tire or waste tire material recycler to meet the requirements of LAC 33:VII.10525.D.	LAC 33:VII.10531.B	\$300	Per occurrence
Failure to provide a manifest for all waste tire shipments containing more than 20 tires.	LAC 33:VII.10533.A	\$200	Per occurrence
Failure to follow the requirements for manifest discrepancies.	LAC 33:VII.10533.C	\$300	Per occurrence
Failure to maintain completed manifests for three years and have them available for inspection.	LAC 33:VII.10533.D	\$200	Per occurrence
WATER QUALITY			
Failure to develop and/or implement a Spill Prevention and Control Plan (SPC):			
1. Failing to develop an SPC plan for any applicable facility.	LAC 33:IX.905	\$500	Per occurrence
2. Failing to implement any component of an SPC plan.	LAC 33:IX.905	\$100	Per occurrence
Unauthorized discharge of oily fluids.	LAC 33:IX.1701.B	\$1,000	Per occurrence
Unauthorized discharge of oil field wastes, including produced water.	LAC 33:IX.1901.A	\$1,000	Per occurrence
Failure to submit a Notice of Intent for coverage under the LAR050000 or LAR100000 LPDES Storm Water General Permit.	LAC 33:IX.2511.C.1	\$1,000	Per occurrence

Expedited Penalties			
Violation	Citation	Amount	Frequency
Failure to comply with any portion(s) of an LPDES LAG530000 Schedule A permit.	LAC 33:IX.2701.A	\$200 and completion of a department-sponsored compliance class	10 or fewer violations
Failure to comply with any portion(s) of an LPDES LAG530000 Schedule A permit.	LAC 33:IX.2701.A	\$400 and completion of a department-sponsored compliance class	More than 10 violations
Failure to comply with any portion(s) of an LPDES LAG530000 Schedule B permit.	LAC 33:IX.2701.A	\$300 and completion of a department-sponsored compliance class	10 or fewer violations
Failure to comply with any portion(s) of an LPDES LAG530000 Schedule B permit.	LAC 33:IX.2701.A	\$500 and completion of a department-sponsored compliance class	More than 10 violations
Failure to comply with any portion(s) of an LPDES LAG540000 permit.	LAC 33:IX.2701.A	\$400 and completion of a department-sponsored compliance class	10 or fewer violations
Failure to comply with any portion(s) of an LPDES LAG540000 permit.	LAC 33:IX.2701.A	\$600 and completion of a department-sponsored compliance class	More than 10 violations
Failure to comply with any portion(s) of an LPDES LAG750000 permit.	LAC 33:IX.2701.A	\$400 and completion of a department-sponsored compliance class	10 or fewer violations
Failure to comply with any portion(s) of an LPDES LAG750000 permit.	LAC 33:IX.2701.A	\$600 and completion of a department-sponsored compliance class	More than 10 violations
Failure to comply with monitoring requirements of LPDES Storm Water General Permits LAR050000 and LAR100000.	LAC 33:IX.2701.A	\$300	Per occurrence
Failure to submit certain reports as required by any LPDES permit not previously defined as an LPDES General Permit in LAC 33:I.801, including noncompliance reports, storm water reports, pretreatment reports, biomonitoring reports, overflow reports, construction schedule progress reports, environmental audit reports as required by a municipal pollution prevention plan, and toxicity reduction evaluation reports.	LAC 33:IX.2701.A	\$300	Per required submittal

Expedited Penalties			
Violation	Citation	Amount	Frequency
Failure to prepare and/or implement any portion or portions of a Storm Water Pollution Prevention Plan (SWPPP), Pollution Prevention Plan (PPP), or Best Management Practices/Plan (BMP) as required by any LPDES permit not previously defined as an LPDES General Permit in LAC 33:I.801.	LAC 33:IX.2701.A	\$500	Per occurrence
UNDERGROUND STORAGE TANKS			
Failure to register an existing or new UST containing a regulated substance.	LAC 33:XI.301.A-B	\$300	Per inspection
Failure to certify and provide required information on the department's approved registration form.	LAC 33:XI.301.B.1-2	\$300	Per inspection
Failure to provide notification within 30 days after selling a UST system or acquiring a UST system; failure to keep a current copy of the registration form on-site or at the nearest staffed facility.	LAC 33:XI.301.C.1-3	\$300	Per inspection
Allowing a regulated substance to be placed into a new UST system that has not been registered.	LAC 33:XI.301.C.4	\$300	Per inspection
Failure to provide corrosion protection to tanks that routinely contain regulated substances using one of the specified methods.	LAC 33:XI.303.B.1	\$500 and completion of a department-sponsored compliance class	Per inspection
Failure to provide corrosion protection to piping that routinely contains regulated substances using one of the specified methods.	LAC 33:XI.303.B.2	\$500 and completion of a department-sponsored compliance class	Per inspection
Failure to provide corrosion protection to flex hoses and/or sub-pumps that routinely contain regulated substances using one of the specified methods.	LAC 33:XI.303.B.2	\$500 and completion of a department-sponsored compliance class	Per inspection
Failure to provide spill and/or overflow prevention equipment as specified.	LAC 33:XI.303.B.3	\$300 and completion of a department-sponsored compliance class	Per inspection
Failure to upgrade an existing UST system to new system standards as specified.	LAC 33:XI.303.C	\$1,300 and completion of a department-sponsored compliance class	Per inspection
Failure to pay fees by the required date.	LAC 33:XI.307.D	\$200	Per inspection
Failure to report any spill and overflow.	LAC 33:XI.501.C	\$500	Per inspection

Expedited Penalties			
Violation	Citation	Amount	Frequency
Failure to investigate and/or clean up any spill and overflow.	LAC 33:XI.501.C	\$1,500	Per inspection
Failure to continuously operate and maintain corrosion protection to the metal components of portions of the tank and piping that routinely contain regulated substances and are in contact with the ground or water.	LAC 33:XI.503.A.1	\$300 and completion of a department-sponsored compliance class	Per inspection
Failure to have a UST system equipped with a cathodic protection system inspected for proper operation as specified.	LAC 33:XI.503.A.2	\$300 and completion of a department-sponsored compliance class	Per inspection
Failure to inspect a UST system with an impressed current cathodic protection system every 60 days to ensure that the equipment is running properly.	LAC 33:XI.503.A.3	\$300 and completion of a department-sponsored compliance class	Per inspection
Failure to comply with recordkeeping requirements.	LAC 33:XI.503.B	\$200 and completion of a department-sponsored compliance class	Per inspection
Failure to meet requirements for repairs to UST systems.	LAC 33:XI.507	\$300	Per inspection
Failure to follow reporting requirements, maintain required information, and/or keep records at the UST site and make them immediately available or keep them at an alternative site and provide them after a request.	LAC 33:XI.509	\$200 and completion of a department-sponsored compliance class	Per inspection
Failure to meet the performance requirements when performing release detection required in LAC 33:XI.703.	LAC 33:XI.701	\$750 and completion of a department-sponsored compliance class	Per inspection
Failure to use a method or combination of methods of release detection described in LAC 33:XI.701 for all new or existing tank systems.	LAC 33:XI.703.A.1	\$1,500 and completion of a department-sponsored compliance class	Per inspection
Failure to monitor tanks for releases as specified.	LAC 33:XI.703.B.1	\$350 and completion of a department-sponsored compliance class	Per inspection
Failure to monitor underground piping for releases as specified.	LAC 33:XI.703.B.2	\$750 and completion of a department-sponsored compliance class	Per inspection
Failure to maintain release detection records.	LAC 33:XI.705	\$200 and completion of a department-sponsored compliance class	Per inspection

Expedited Penalties			
Violation	Citation	Amount	Frequency
Failure to report any suspected release within 24 hours after becoming aware of the occurrence or when a leak detection method indicates that a release may have occurred.	LAC 33:XI.703.A.2 or 707	\$500 and completion of a department-sponsored compliance class	Per occurrence
Failure to investigate and confirm any suspected release of a regulated substance that requires reporting under LAC 33:XI.707 within seven days.	LAC 33:XI.711	\$1,500	Per occurrence
Failure to maintain corrosion protection and/or release detection on a UST system that is temporarily closed and contains more than 2.5 cm (1 inch) of residue, or 0.3 percent by weight of the total capacity of the UST system.	LAC 33:XI.903.A	\$500 and completion of a department-sponsored compliance class	Per inspection
Failure to comply with permanent closure and/or changes in service procedures.	LAC 33:XI.905	\$500	Per inspection
Failure to use a certified worker for tank closure.	LAC 33:XI.905.A.2	\$1,000	Per inspection

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2025(D).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 32:2243 (December 2006), amended by the Office of the Secretary, Legal Affairs Division, LR 34:

### Part VII. Solid Waste

#### Subpart 1. Solid Waste Regulations

#### Chapter 1. General Provisions and Definitions

#### §115. Definitions

A. For all purposes of these rules and regulations, the terms defined in this Section shall have the following meanings, unless the context of use clearly indicates otherwise.

\*\*\*

*Transport*—to move solid waste off-site to a non-processing transfer station or collection, processing, or disposal facility.

*Transporter*—any person who moves solid waste off-site to a non-processing transfer station or collection, processing, or disposal facility, excluding individuals who transport their own residential waste to a collection facility, non-processing transfer station, or permitted processing facility and/or solid waste landfill.

\*\*\*

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended LR 22:279 (April 1996), amended by the Office of Waste Services, Solid Waste Division, LR 23:1145 (September 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2514, 2609 (November 2000), amended by the Office of Environmental Assessment, LR 31:1576 (July 2005),

amended by the Office of the Secretary, Legal Affairs Division, LR 33:1019 (June 2007), LR 34:

### **Chapter 3. Scope and Mandatory Provisions of the Program**

#### **§315. Mandatory Provisions**

A. - N.2. . . .

O. Generators shall not offer solid waste to transporters, processing facilities, or disposal facilities that have not received authorization and/or the required permits necessary to receive and/or manage the generator's solid waste.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended LR 19:1143 (September 1993), LR 19:1315 (October 1993), repromulgated LR 19:1421 (November 1993), amended LR 22:279 (April 1996), amended by the Office of Waste Services, Solid Waste Division, LR 23:954 (August 1997), LR 23:1145 (September 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2516 (November 2000), LR 30:1675 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2487 (October 2005), LR 33:1030 (June 2007), LR 34:

Mike D. McDaniel, Ph.D.  
Secretary

0711#060

### **DECLARATION OF EMERGENCY**

#### **Office of the Governor Division of Administration Racing Commission**

Pick N (LAC 35:XIII.Chapter 116)

The Louisiana State Racing Commission is exercising the emergency provisions of the Administrative Procedures Act, R.S. 49:953(B), and pursuant to the authority granted under R.S. 4:141 et seq., adopts the following emergency rule effective October 12, 2007, and it shall remain in effect for 120 days or until this Rule takes effect through the normal promulgation process, whichever comes first.

The Louisiana State Racing Commission finds it necessary to amend this Rule to further promote horseracing and increased revenues therefrom, by ensuring fair and alternate wagering opportunities to the public.

#### **Title 35**

#### **HORSE RACING**

#### **Part XIII. Wagering**

#### **Chapter 116. Pick N**

#### **§11601. Description; Selection; Principle**

A. The Pick N is a form of pari-mutuel wagering where N is a varying number of races. Bettors select the first horse in each of N consecutive races designated as the Pick N by the permit holder. The principle of a Pick N is in effect a contract by the purchaser of a Pick N ticket to select the winners of each of the N races designated as the Pick N. The sale of Pick N tickets other than from pari-mutuel machines shall be deemed illegal and is prohibited.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:149, R.S. 4:149.1 and R.S. 4:149.2.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Racing Commission, LR 28:1014 (May 2002), amended LR 34:

#### **§11603. Wagering Pool**

A. The Pick N pool shall be held entirely separate from all other pools and is no part of a daily double, exacta, trifecta, quinella, or any other wagering pool. The Pick N pool is a pool wherein the bettor is required to select N consecutive winning horses and is not a parlay.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:149, R.S. 4:149.1 and R.S. 4:149.2.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Racing Commission, LR 28:1014 (May 2002), amended LR 34:

#### **§11605. Denominations**

A. Pick N tickets shall be sold in not less than denominations approved by Commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:149, R.S. 4:149.1 and R.S. 4:149.2.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Racing Commission LR 28:1014 (May 2002), amended LR 34:

#### **§11607. Approval; Notation**

A. Races in which Pick N pools are conducted shall be approved by the commission and clearly designated in the program, and Pick N tickets will be clearly marked as "Pick N" tickets.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:149, R.S. 4:149.1 and R.S. 4:149.2.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Racing Commission, LR 28:1014 (May 2002), amended LR 34:

#### **§11609. Procedure**

A. After the wagering closes for the first race of the N designated "Pick N" races, the commission will be deducted from the pari-mutuel pool in accordance with Louisiana law. The remaining net pool, subject to distribution among winning ticket holders shall be distributed among the holders of tickets which correctly designate the winner in each of the N races comprising the Pick N and the aggregate number of winning tickets shall be divided into the net pool and be paid the same payoff price.

1. In the event no ticket is sold combining winners of all the races comprising the Pick N, the holders of tickets which correctly designate the most official winners, but less than N, in each of the N races comprising the Pick N shall be deemed winning ticket holders, and the aggregate number of winning tickets shall be divided into the net pool and be paid the same payoff price.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:149, R.S. 4:149.1 and R.S. 4:149.2.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Racing Commission, LR 28:1014 (May 2002), amended LR 34:

#### **§11611. No Winning Ticket**

A. In the event no winning ticket is sold that would require the distribution of the Pick N pool as mentioned in §11609, the association shall make a complete refund of the Pick N pool.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:149, R.S. 4:149.1 and R.S. 4:149.2.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Racing Commission, LR 28:1015 (May 2002), amended LR 34:

**§11613. Cancelled Races**

A. If for any reason one or more of the races comprising the Pick N is/are cancelled or declared "no race," the net pool shall be distributed as provided in §11609.

B. In the event the Pick N pool is opened and wagers accepted, and all N races comprising the Pick N are cancelled for any reason, the association shall make a complete refund of the Pick N pool.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:149, R.S. 4:149.1 and R.S. 4:149.2.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Racing Commission, LR 28:1015 (May 2002), amended LR 34:

**§11615. Dead Heats**

A. In the event of a dead heat for win between two or more horses in any Pick N race, all such horses in the dead heat for win shall be considered as wining horses in the race for the purpose of calculating the pool.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:149, R.S. 4:149.1 and R.S. 4:149.2.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Racing Commission, LR 28:1015 (May 2002), amended LR 34:

**§11617. Closing Time; Disclosure**

A. No pari-mutuel ticket for the Pick N pool shall be sold, exchanged or cancelled after the time of the closing of wagering in the first of the N races comprising the Pick N except for such refunds on Pick N tickets as required by this regulation, and no person shall disclose the number of tickets sold in the Pick N pool or the number or amount of tickets selecting winners of Pick N races until such time as the stewards have determined the last race comprising the Pick N to be official. At the conclusion of the race immediately prior to the last race of the Pick N, the association may display potential distributions to ticket holders depending upon the outcome of the last race of the Pick N.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:149, R.S. 4:149.1 and R.S. 4:149.2.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Racing Commission, LR 28:1015 (May 2002), amended LR 34:

**§11619. Entry or Field**

A. Those horses constituting an entry or a field as defined within the rules of racing shall race in any Pick N race as a single wagering interest for the purpose of the Pick N pari-mutuel pool calculations and payouts to the public. A scratch after wagering has begun of any part of an entry or field selection in such race shall have no effect with respect to the status of such entry and/or field as a viable wagering interest.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:149, R.S. 4:149.1 and R.S. 4:149.2.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Racing Commission, LR 28:1015 (May 2002), amended LR 34:

**§11621. Scratches and Non-Starters**

A. At anytime after wagering begins on the Pick N pool should a horse, entire betting entry or field be scratched, excused or declared a non-starter in any Pick N race, no further tickets selecting such horse, betting entry or field shall be issued, and wagers upon such horse, betting entry or field, for purposes of the Pick N pool shall be deemed wagers upon the horse, betting entry or field upon which the

most money has been wagered in the win pool at the close of win pool betting for such race. In the event of a money tie in the win pool, the tied horse, betting entry or field with the lowest running number, as designated by the official racing program, shall be designated as the favorite for substitution purposes. For the purpose of this Section, when horses are prevented from starting by any malfunction of the starting gate itself they shall be considered as having been excused by the stewards. After close of betting, there shall be no refund, except as provided in §11611 or §11613.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:149, R.S. 4:149.1 and R.S. 4:149.2.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Racing Commission, LR 28:1015 (May 2002), amended LR 34:

**§11623. Display**

A. These rules shall be prominently displayed in the betting area of the association conducting the Pick N.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:149, R.S. 4:149.1 and R.S. 4:149.2.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Racing Commission, LR 28:1015 (May 2002), amended LR 34:

**§11625. Unforeseen Circumstances**

A. Should circumstances occur which are not foreseen in these rules, questions arising thereby shall be resolved by the association and/or commission in accordance with general pari-mutuel practices. Decisions regarding distribution of the Pick N pools shall be final.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:149, R.S. 4:149.1 and R.S. 4:149.2.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Racing Commission, LR 28:1015 (May 2002), amended LR 34:

Charles A. Gardiner III  
Executive Director

0711#012

**DECLARATION OF EMERGENCY**

**Office of the Governor  
Office of Financial Institutions**

Louisiana Trust Company  
(LAC 10:I.1501-1503)

The Office of Financial Institutions, pursuant to the emergency provision of the Administrative Procedure Act, R.S. 49:953(B), adopts the following Emergency Rule of the Louisiana Trust Company Statutes as authorized by R.S. 6:121; 6:576; 6:592; and 6:613. This Rule is adopted in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., shall become effective November 9, 2007, and shall remain in effect for the maximum period allowed under the Act or until adoption of the Rule, whichever occurs first.

The Office of Financial Institutions has found an immediate need, since no such rules exist at this time, to provide rules for the establishment of fees and assessments to ensure that the costs of regulation of trust company activities in Louisiana are adequately recaptured; prevent any adverse fiscal impact on the state; and provide the commissioner adequate resources to properly regulate

Louisiana trust companies. Further, it will benefit the consumer by allowing for the establishment of entities that engage in activities that could provide additional legal solutions to meet estate planning and asset management goals.

**Title 10**

**FINANCIAL INSTITUTIONS, CONSUMER CREDIT,  
INVESTMENT SECURITIES AND UCC**

**Part I. Financial Institutions**

**Chapter 15. Louisiana Trust Company**

**§1501. General Provisions**

A. The Depository Institutions' Section of the Louisiana Office of Financial Institutions ("OFI") is funded entirely through assessments and fees levied on state-chartered financial institutions for services rendered. All fees detailed in this rule are nonrefundable and must be paid at the time the application is filed with this office. An applicant may submit a request that a reduced fee be charged for the simultaneous filing of similar multiple applications other than de novo applications. This request will not be approved for applications that are not expected to be consummated within 12 months of the filing date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121; 6:576; 6:592; and 6:613.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 34:

**§1503. Fees and Assessments**

A. Pursuant to the authority granted under R.S. 6:121; 6:576; 6:592; and 6:613, the following fee and assessment structure is hereby established to cover necessary costs associated with the administration of the Louisiana Trust Company Law, R.S. 6:571 et seq.

Description	Fee
A. Application for a de novo public trust company, or the merger or consolidation of public trust companies.	\$10,000
B. The conversion from a national or federally-chartered trust company to a state-chartered public trust company.	\$1,500
C. Application for a Louisiana trust company to establish a trust office or trust representative office.	Standard Form: \$1,000 Short Form: \$250
D. Application to form a de novo private trust company	\$5,000
E. Application for a conversion or merger of a state-chartered trust company into a federally chartered depository institution or a federal trust company.	\$1,500
F. Semi-annual assessment for each public trust company domiciled in Louisiana to be assessed no later than June 30th and December 31st.	\$2,500
G. Semi-annual assessment for each private trust company domiciled in Louisiana to be assessed no later than June 30th and December 31st.	\$1,000
H. Examination fee for each trust company domiciled in Louisiana. Fee per examiner.	\$50 per hour
I. Review of a restatement and/or amendment to the Articles of Incorporation of a state-chartered Louisiana trust company.	\$250
J. Application by a state-chartered trust company to establish or acquire a subsidiary.	\$500

Description	Fee
K. Annual certification for each private trust company	\$500
L. The conversion from a private trust company to a public trust company.	\$5,000
M. Examination fee for each out-of-state branch, administrative office, trust production office, or representative office of any trust company domiciled in Louisiana.	Any fees assessed pursuant to this rule plus any amounts assessed by the host state regulator for participating in the examination of the Louisiana entity.
N. Examination fee for each branch, administrative office, or representative office of any out-of-state trust company operating in Louisiana in the absence of a sharing agreement between OFI and the host state that establishes fees for examinations and other administrative cost. This fee shall be billed to the primary regulator of the out-of-state entity being examined, and due upon receipt of the OFI invoice.	\$50/hour per examiner plus the actual expenses incurred by this office to conduct or assist in conducting such examinations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121; 6:576; 6:592; and 6:613.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 34:

John Ducrest, CPA  
Commissioner

0711#084

**DECLARATION OF EMERGENCY**

**Department of Health and Hospitals  
Office of the Secretary  
Bureau of Health Services Financing**

Early and Periodic Screening, Diagnosis and Treatment  
Dental Program—Reimbursement Rate Increase  
(LAC 50:XV.6905)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends LAC 50:XV.6905 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing provides coverage and reimbursement of dental services under the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program. Reimbursement for these services is a flat fee established by the Bureau minus the amount that any third party coverage would pay (*Louisiana Register*, Volume 29, Number 2). Additional funds were allocated during the 2006 Regular Session of the Louisiana Legislature and the Bureau subsequently increased the reimbursement rate for certain dental procedures and established coverage for additional procedures (*Louisiana Register*, Volume 33, Number 6). As a result of the allocation of additional funds by the Legislature during the 2007 Regular Session, the

Bureau proposes to amend the June 20, 2007 Rule to increase the reimbursement fees for certain dental services covered in the EPSDT Program.

This action is being taken to promote the health and welfare of Medicaid recipients and to maintain access to EPSDT dental services by encouraging the continued participation of dental providers in the Medicaid Program. It is estimated that implementation of this Emergency Rule will increase expenditures in the Medicaid Program by approximately \$11,707,458 for state fiscal year 2007-2008.

Effective November 1, 2007, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the provisions governing the reimbursement fees for dental procedures covered in the EPSDT Program.

#### **Title 50**

### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

#### **Part XV. Services for Special Populations**

##### **Subpart 5. Early and Periodic Screening, Diagnosis and Treatment**

#### **Chapter 69. Dental**

#### **§6905. Reimbursement**

A. - A.2. ...

B. Effective for dates of service on and after November 1, 2007, the reimbursement fees for dental services are increased to 65 percent of the 2007 National Dental Advisory Service Comprehensive Fee Report 70th percentile rate unless otherwise stated in this Chapter.

1.-3. Repealed.

C. Designated procedures in the following dental services categories are excluded from the rate increase. The reimbursement fees for these procedures shall continue to be the fee on file in the EPSDT Dental Program Fee Schedule as of October 31, 2007.

1. diagnostic services;
2. preventive services;
3. restorative services;
4. endodontic services;
5. periodontic services;
6. removable and fixed prosthodontic services;
7. oral and maxillofacial surgery services;
8. orthodontic services; and
9. adjunctive general services.

10.-12. Repealed.

NOTE: The 47 dental procedures excluded from the rate increase are included in the EPSDT Dental Program Fee Schedule with the fee on file as of October 31, 2007.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:1138 (June 2007), amended LR 33:

Interested persons may submit written comments to Jerry Phillips, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Roxane A. Townsend, M.D.  
Secretary

0711#022

## **DECLARATION OF EMERGENCY**

### **Department of Health and Hospitals Office of the Secretary Bureau of Health Services Financing**

Home and Community Based Services  
Waivers—Adult Day Health Care—Medical Assistance  
Program (LAC 50:XXI.2101, 2103, 2107, 2109,  
2313, 2317 and Chapter 27)

The Department of Health and Hospitals, Office of Aging and Adult Services proposes to amend LAC 50:XXI.2101, 2103, 2107, 2109, 2313 and Chapter 27, and to adopt §2317 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing repromulgated the provisions governing home and community-based waiver services for adult day health care (*Louisiana Register*, Volume 30, Number 9). The Department of Health and Hospitals, Office of Aging and Adult Services subsequently amended the September 20, 2004 Rule to:

1. clarify procedures for the allocation of ADHC waiver opportunities;
2. amend the provisions governing the medical certification process to remove preadmission screening and annual resident review requirements; and
3. eliminate the use of the Title XIX Medical-Social Information Form (Form 90-L) (*Louisiana Register*, Volume 32, Number 12).

The Department promulgated an Emergency Rule to amend the September 20, 2004 Rule to:

1. redefine the target population;
2. establish provisions governing placement on the request for services registry;
3. clarify the comprehensive plan of care requirements; and
4. establish provider reporting requirements and admission and discharge criteria for the ADHC Waiver (*Louisiana Register*, Volume 33, Number 3).

The department amended the provisions contained in the March 20, 2007 Emergency Rule to more precisely define the target population, establish explicit provisions governing placement on the request for services registry and admission and discharge criteria for the ADHC Waiver (*Louisiana Register*, Volume 33, Number 5). The May 20, 2007 Emergency Rule was amended to further clarify the provisions governing the ADHC Waiver program (*Louisiana Register*, Volume 33, Number 8). This Emergency Rule is being promulgated to continue the provisions of the August 20, 2007 Emergency Rule. This action is being taken to avoid federal sanctions which may result from not having provisions to clearly define the ADHC target population and admission and discharge criteria.

Effective December 19, 2007, the Department of Health and Hospitals, Office of Aging and Adult Services amends the provisions governing the Adult Day Health Care Waiver program.

#### **Title 50**

### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

#### **Part XXI. Home and Community**

#### **Based Services Waivers**

#### **Subpart 3. Adult Day Health Care**

#### **Chapter 21. General Provisions**

#### **§2101. Introduction**

A. These standards for participation specify the requirements of the Adult Day Health Care (ADHC) Waiver Program. The program is funded as a waiver service under the provisions of Title XIX of the Social Security Act and is administered by the Department of Health and Hospitals (DHH).

B. Waiver services are provided under the provisions of the approved waiver agreement between the Centers for Medicare and Medicaid Services (CMS) and the Louisiana Medicaid Program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2034 (September 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:

#### **§2103. Program Description**

A. The Adult Day Health Care (ADHC) Waiver Program expands the array of services available to functionally-impaired individuals and helps bridge the gap between independence and institutional care by allowing them to remain in their own homes and communities. This program provides direct care for five or more hours in a 24-hour weekday to individuals who are physically and/or mentally impaired.

B. The target population for the ADHC Waiver Program includes individuals who:

1. are 65 years old or older; or
2. 22 to 64 years old and disabled according to Medicaid standards or the Social Security Administration's disability criteria; and
3. meet nursing facility level of care requirements.

C. The long-range goal for all adult day health care participants is the delay or prevention of long-term care facility placement. The more immediate goals of the Adult Day Health Care Waiver are to:

1. promote the individual's maximum level of independence;
2. maintain the individual's present level of functioning as long as possible, preventing or delaying further deterioration;
3. restore and rehabilitate the individual to the highest possible level of functioning;
4. provide support and education for families and other caregivers;
5. foster socialization and peer interaction; and
6. serve as an integral part of the community services network and the long-term care continuum of services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2034 (September 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:

#### **§2107. Request for Services Registry**

A. The Department of Health and Hospitals is responsible for the Request for Services Registry, hereafter referred to as "the registry," for the Adult Day Health Care Waiver. An individual who wishes to have his or her name placed on the registry shall contact a toll-free telephone number which shall be maintained by the department.

B. Individuals who desire their name to be placed on the ADHC Waiver registry shall be screened to determine whether they meet nursing facility level of care. Only individuals who meet this criterion will be added to the registry.

C. - D. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and pursuant to Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2035 (September 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 32:2256 (December 2006), LR 34:

#### **§2109. Programmatic Allocation of Waiver**

#### **Opportunities**

A. When funding is appropriated for a new ADHC Waiver opportunity or an existing opportunity is vacated, the Department shall send a written notice to an individual on the registry indicating that a waiver opportunity is available. That individual shall be evaluated for a possible ADHC Waiver opportunity assignment.

B. Adult Day Health Care Waiver opportunities shall be offered based upon the date of first request for services, with priority given to individuals who are in nursing facilities but could return to their home if ADHC Waiver services are provided. Priority shall also be given to those individuals who have indicated that they are at imminent risk of nursing facility placement.

1. A person is considered to be at imminent risk of nursing facility placement when he:

- a. is likely to require admission to a nursing facility within the next 120 days;
- b. faces a substantial possibility of deterioration in mental condition, physical condition or functioning if either home and community-based services or nursing facility services are not provided within 120 days; or
- c. has a primary caregiver who has a disability or is age 70 or older.

C. Remaining waiver opportunities, if any, shall be offered on a first-come, first-serve basis to individuals who qualify for nursing facility level of care, but who are not at imminent risk of nursing facility placement.

D. If an applicant is determined to be ineligible for any reason, the next individual on the registry is notified and the process continues until an individual is determined eligible. An ADHC Waiver opportunity is assigned to an individual when eligibility is established and the individual is certified.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and pursuant to Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:

**Chapter 23. Provider Participation**

**§2313. Comprehensive Plan of Care (CPOC)**

A. ...

B. Reimbursement shall not be made for ADHC Waiver services provided prior to the Department's approval of the CPOC. Comprehensive plans of care must be completed and submitted timely in accordance with DHH policy and procedures.

C. The ADHC provider shall complete a CPOC which shall contain the type and number of services, including waiver and all other services, necessary to maintain the waiver recipient safely in the community.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2040 (September 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:

**§2317. Reporting Requirements**

A. ADHC facilities are obligated to report changes to the department that could affect the waiver recipient's eligibility including, but not limited to, those changes cited in the denial or discharge criteria.

B. ADHC facilities are responsible for documenting the occurrence of incidents or accidents that affect the health, safety and welfare of the recipient and completing an incident report. The incident report shall be submitted to the Department with the specified requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and pursuant to Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:

**Chapter 27. Admission and Discharge Criteria**

**§2701. Admission Criteria**

A. Admission to the ADHC Waiver Program shall be determined in accordance with the following criteria:

1. initial and continued Medicaid financial eligibility;
2. initial and continued eligibility for a nursing facility level of care;
3. justification, as documented in the approved CPOC, that the ADHC Waiver services are appropriate, cost-effective and represent the least restrictive environment for the individual;
4. assurance that the health, safety and welfare of the individual can be maintained in the community with the provision of ADHC Waiver services.

B. Failure of the individual to cooperate in the eligibility determination process or to meet any of the criteria in §2701.A. above will result in denial of admission to the ADHC Waiver.

C. - G. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2041 (September 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:

**§2703. Denial or Discharge Criteria**

A. Admission shall be denied or the recipient shall be discharged from the ADHC Waiver Program if any of the following conditions are determined.

1. The individual does not meet the criteria for Medicaid financial eligibility.

2. The individual does not meet the criteria for a nursing facility level of care.

3. The recipient resides in another state or has a change of residence to another state.

4. Continuity of services is interrupted as a result of the recipient not receiving and/or refusing ADHC Waiver services during a period of 30 consecutive days.

5. The health, safety and welfare of the individual cannot be assured through the provision of ADHC Waiver services.

6. The individual fails to cooperate in the eligibility determination process or in the performance of the CPOC.

7. It is not cost effective to serve the individual in the ADHC Waiver.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and pursuant to Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:

Implementation of the provisions of this Rule shall be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

Interested persons may submit written comments to Hugh Eley, Office of Aging and Adult Services, P.O. Box 2031, Baton Rouge, LA 70821-2031. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Roxane A. Townsend, M.D.  
Secretary

0711#064

**DECLARATION OF EMERGENCY**

**Department of Health and Hospitals  
Office of the Secretary  
Bureau of Health Services Financing**

Home and Community Based Services Waivers  
Elderly and Disabled Adult Waiver  
(LAC 50:XXI.Chapters 81 and 85)

The Department of Health and Hospitals, Office of Aging and Adult Services proposes to amend LAC 50:XXI.Chapters 81 and 85 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing adopted provisions governing home and community-based waiver services for elderly and disabled adults in LAC 50:XXI.Chapters 81-89 (*Louisiana Register*, Volume 30, Number 8). The Division of Long Term Supports and Services amended the provisions governing the Elderly and Disabled Adult (EDA) Waiver to:

1. eliminate the duplication of like services currently provided in the waiver and as a Medicaid State Plan service;

2. define the existing service package and establish new services; and

3. revise the methodology for allocation of waiver opportunities (*Louisiana Register*, Volume 32, Number 7).

The Department promulgated an Emergency Rule to amend the July 20, 2006 Rule to establish provisions governing placement on the request for services registry (*Louisiana Register*, Volume 33, Number 3). The department subsequently promulgated an Emergency Rule to further clarify the provisions governing the EDA Waiver, including the provisions governing placement on the request for services registry, allocation of waiver opportunities and admission and discharge criteria (*Louisiana Register*, Volume 33, Number 5). The May 20, 2007 Emergency Rule was amended to further clarify the provisions governing the EDA Waiver (*Louisiana Register*, Volume 33, Number 8).

Act 18 of the 2007 Regular Session of the Louisiana Legislature authorized expenditures to the Medical Vendor Program to establish additional waiver opportunities in the EDA Waiver Program for individuals diagnosed with Amyotrophic Lateral Sclerosis (ALS). In compliance with Act 18, the department now proposes to amend the provisions governing the programmatic allocation of EDA Waiver opportunities. This Emergency Rule will also continue the provisions of the August 20, 2007 Emergency Rule governing the request for services registry and admission and discharge criteria.

This action is being taken to promote the well-being of Louisiana citizens by facilitating access to home and community-based services through the adoption of clear and precise provisions for the EDA Waiver, and to assure that individuals diagnosed with ALS receive priority access to EDA Waiver services. It is estimated that implementation of the additional waiver opportunities designated for individuals with ALS will increase expenditures in the EDA Waiver Program by approximately \$3,579,847 for state fiscal year 2007-2008.

Effective November 20, 2007, the Department of Health and Hospitals, Office of Aging and Adult Services amends the provisions governing the Elderly and Disabled Adult Waiver program.

## **Title 50**

### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

#### **Part XXI. Home and Community Based Services Waiver**

##### **Subpart 7. Elderly and Disabled Adults Waiver**

##### **Chapter 81. General Provisions**

##### **§8101. Introduction**

A. The target population for the Elderly and Disabled Adult (EDA) Waiver Program includes individuals who:

1. are 65 years old or older; or
2. 21 to 64 years old and disabled according to Medicaid standards or the Social Security Administration's disability criteria; and
3. meet nursing facility level of care requirements.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:1698 (August 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Division of Long Term Supports and Services, LR

32:1245 (July 2006), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 33:

##### **§8103. Request for Services Registry**

A. The Department of Health and Hospitals (DHH) is responsible for the Request for Services Registry, hereafter referred to as "the registry," for the Elderly and Disabled Adult Waiver. An individual who wishes to have his or her name placed on the registry shall contact a toll-free telephone number which shall be maintained by the Department.

B. Individuals who desire their name to be placed on the EDA Waiver registry shall be screened to determine whether they meet nursing facility level of care. Only individuals who meet this criterion will be added to the registry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:1699 (August 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Division of Long Term Supports and Services, LR 32:1245 (July 2006), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 33:

##### **§8105. Programmatic Allocation of Waiver Opportunities**

A. When funding is appropriated for a new EDA Waiver opportunity or an existing opportunity is vacated, the Department shall send a written notice to an individual on the registry indicating that a waiver opportunity is available. That individual shall be evaluated for a possible EDA Waiver opportunity assignment.

B. EDA Waiver opportunities are offered based on the date of first request for services, with priority given to individuals who are in a nursing facility, but could return to their home if EDA Waiver services are provided. Priority shall also be given to those individuals who have indicated that they are at imminent risk of nursing facility placement.

1. A person is considered to be at imminent risk of nursing facility placement when he:

- a. is likely to require admission to a nursing facility within the next 120 days;
- b. faces a substantial possibility of deterioration in mental condition, physical condition or functioning if either home and community-based services or nursing facility services are not provided within 120 days; or
- c. has a primary caregiver who has a disability or is age 70 or older.

C. One hundred and fifty EDA waiver opportunities are reserved for qualifying individuals who have been diagnosed with Amyotrophic Lateral Sclerosis (ALS). Qualifying individuals who have been diagnosed with ALS shall be offered an opportunity on a first-come, first-serve basis.

D. Remaining waiver opportunities, if any, shall be offered on a first-come, first-serve basis to individuals who qualify for nursing facility level of care, but who are not at imminent risk of nursing facility placement.

E. If an applicant is determined to be ineligible for any reason, the next individual on the registry is notified as stated above and the process continues until an individual is determined eligible. An EDA Waiver opportunity is assigned to an individual when eligibility is established and the individual is certified.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:1699 (August 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Division of Long Term Supports and Services, LR 32:1245 (July 2006), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 33:

## **Chapter 85. Admission and Discharge Criteria**

### **§8501. Admission Criteria**

A. - A.3. ...

4. assurance that the health, safety and welfare of the individual can be maintained in the community with the provision of EDA Waiver services.

B. Failure of the individual to cooperate in the eligibility determination process or to meet any of the criteria in §8501.A. will result in denial of admission to the EDA Waiver.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services LR 30:1699 (August 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Division of Long Term Supports and Services, LR 32:1246 (July 2006), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 33:

### **§8503. Denial or Discharge Criteria**

A. Admission shall be denied or the recipient shall be discharged from the EDA Waiver Program if any of the following conditions are determined.

1. The individual does not meet the criteria for Medicaid financial eligibility.

2. The individual does not meet the criteria for a nursing facility level of care.

3. The recipient resides in another state or has a change of residence to another state.

4. Continuity of services is interrupted as a result of the recipient not receiving and/or refusing EDA Waiver services during a period of 30 consecutive days.

5. The health, safety and welfare of the individual cannot be assured through the provision of EDA Waiver services within the individual's cost effectiveness.

6. The individual fails to cooperate in the eligibility determination process or in the performance of the CPOC.

7. Failure on behalf of the individual to maintain a safe and legal home environment.

8. It is not cost effective to serve the individual in the EDA Waiver.

9. - 10. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:1699 (August 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Division of Long Term Supports and Services, LR 32:1246 (July 2006), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 33:

Implementation of the provisions of this Rule shall be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

Interested persons may submit written comments to Hugh Eley, Office of Aging and Adult Services, P.O. Box 2031, Baton Rouge, LA 70821-2031. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Roxane A. Townsend, M.D.  
Secretary

0711#066

## **DECLARATION OF EMERGENCY**

### **Department of Health and Hospitals Office of the Secretary Bureau of Health Services Financing**

#### **Home and Community Based Services Waivers— Termination of Services for Displaced Recipients (LAC 50:XXI.301)**

The Department of Health and Hospitals, Office for Citizens with Developmental Disabilities and the Office of Aging and Adult Services adopts LAC 50:XXI.301 as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is being promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted provisions governing eligibility for home and community-based services waivers (*Louisiana Register*, Volume 24, Number 3). The Office for Citizens with Developmental Disabilities and the Division of Long Term Supports and Services adopted provisions governing the termination of services and limited retention of waiver opportunities for waiver recipients displaced by Hurricanes Katrina and Rita (*Louisiana Register*, Volume 32, Number 4). This Emergency Rule is being promulgated to continue the provisions of the April 20, 2006 Emergency Rule. This action is being taken to avoid federal sanctions for failure to comply with federal requirements to assure the health and welfare of recipients of home and community-based waiver services.

Effective December 16, 2007, the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities and the Office of Aging and Adult Services adopts the following provisions governing the eligibility for home and community-based waiver services.

#### **Title 50**

### **PUBLIC HEALTH—MEDICAL ASSISTANCE Part XXI. Home and Community Based Services Waivers**

#### **Subpart 1. General Provisions**

### **Chapter 3. Eligibility**

#### **§301. Termination of Coverage for Displaced Recipients**

A. Effective July 1, 2006, waiver recipients who have been displaced by Hurricanes Katrina or Rita and are currently residing in other states will no longer be able to

receive waiver services under the Louisiana Medicaid Program.

B. This termination of coverage is applicable to recipients receiving services in the following home and community-based waivers:

1. the New Opportunities Waiver;
2. Children's Choice;
3. the Elderly and Disabled Adult Waiver; and
4. the Adult Day Health Care Waiver.

C. If the individual returns to live in Louisiana on or before June 2008, he/she must contact the Department to report his/her address and to request that waiver services be restarted.

D. The individual's name will be placed on a preferred registry with other hurricane evacuees who have returned to live in Louisiana and requested that their waiver services be restarted.

E. Waiver opportunities shall be offered to individuals on the preferred registry on a first-come, first-serve basis.

1. The first available waiver opportunity shall be offered to an individual on this registry based on the date that the request to restart services was received.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities and the Office of Aging and Adult Services, LR 34:

Implementation of this Emergency Rule is contingent upon approval by the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services.

Interested persons may submit written comments to Kathy Kliebert, Office for Citizens with Developmental Disabilities, P. O. Box 3117, Baton Rouge, LA 70821-3117 or Hugh Eley, Division of Long Term Supports and Services, P.O. Box 3767, Baton Rouge, LA 70821-3767. They are responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Roxane A. Townsend, M.D.  
Secretary

0711#063

## **DECLARATION OF EMERGENCY**

**Department of Health and Hospitals  
Office of the Secretary  
Bureau of Health Services Financing**

Medicaid Eligibility—Disability Medicaid Program  
(LAC 50:III.2305)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to adopt LAC 50:III.2305 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in

effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

Section 1902(a)(10) of Title XIX of the Social Security Act and Section 435.210 of Title 42 of the Code of Federal Regulations (CFR) provides states with the option to cover individuals under their Medicaid State Plan who are aged, blind or have a disability, and who meet the income and resource requirements for Supplemental Security Income (SSI) cash assistance. These individuals are not currently included as an eligibility category under Louisiana's Medicaid State Plan and must be referred to the Social Security Administration for assistance. Their Medicaid eligibility is contingent upon a favorable decision for SSI cash assistance. Pursuant to Section 1902(a)(10) of Title XIX of the Social Security Act and 42 CFR 435.210, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted provisions to include this optional coverage group under the Medicaid State Plan and provide Medicaid-only services in the Disability Medicaid Program (*Louisiana Register*, Volume 33, Number 4). This Emergency Rule is being promulgated to continue the provisions of the April 20, 2007 Emergency Rule. This action is being taken to avoid imminent peril to the health and safety of certain individuals who would have to wait for a Social Security Administration decision to receive Medicaid benefits in order to obtain necessary medical care.

Effective December 18, 2007, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts provisions to provide Medicaid-only coverage to aged, blind and disabled individuals through the Disability Medicaid Program.

### **TITLE 50**

## **PUBLIC HEALTH—MEDICAL ASSISTANCE**

### **Part III. Eligibility**

#### **Subpart 3. Eligibility Groups and Factors**

#### **Chapter 23. Eligibility Groups and Medicaid Programs**

##### **§2305. Disability Medicaid Program**

A. The Disability Medicaid Program provides Medicaid-only coverage to aged, blind or disabled individuals who meet income and resource requirements for Supplemental Security Income (SSI) cash assistance.

B. Individuals receiving services in the Disability Medicaid Program will be included as an optional coverage group under the Medicaid State Plan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:

Implementation of the provisions of this Rule shall be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

Interested persons may submit written comments to Jerry Phillips, Department of Health and Hospitals, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to

inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Roxane A. Townsend, M.D.  
Secretary

0711#062

## DECLARATION OF EMERGENCY

### Department of Health and Hospitals Bureau of Health Services Financing

Mental Health Rehabilitation Program—Moratorium on  
Mental Health Rehabilitation Providers  
(LAC 50:XV.701)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends LAC 50:XV.701 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgated a Rule to adopt a moratorium on the enrollment of mental health rehabilitation (MHR) providers to participate in the Medicaid Program (*Louisiana Register*, Volume 31, Number 3). The Department by Emergency Rule repealed the provisions of the March 20, 2005 Rule governing the moratorium on the enrollment of MHR providers (*Louisiana Register*, Volume 33, Number 7). This Emergency Rule is being promulgated to continue the provisions of the August 1, 2007 Emergency Rule. This action is being taken to avoid imminent peril to the public health, safety and welfare of Louisiana citizens who are not able to access necessary mental health services due to a critical shortage of MHR providers since Hurricanes Katrina and Rita.

Effective November 30, 2007, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing repeals the provisions governing the moratorium on the enrollment of MHR providers.

#### Title 50

### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part XV. Services for Special Populations

##### Subpart 1. Mental Health Rehabilitation

#### Chapter 7. Provider Participation Requirements

##### Subchapter A. Certification and Enrollment

#### §701. Provider Enrollment Moratorium

A. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:668 (March 2005), amended LR 32:2069 (November 2006), repealed LR 34:

Interested persons may submit written comments to Jerry Phillips, Department of Health and Hospitals, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to

inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Roxane A. Townsend, M.D.  
Secretary

0711#061

## DECLARATION OF EMERGENCY

### Department of Health and Hospitals Office of the Secretary Bureau of Health Services Financing

Nursing Facilities—Standards for Payment  
Level of Care Determination  
(LAC 50:II.10154)

The Department of Health and Hospitals, Office of the Secretary, proposes to amend LAC 50:II.10154 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Division of Long Term Supports and Services amended the Medicaid standards governing nursing facility levels of care to incorporate a new tool for the nursing facility determination of level of care. This new tool, the Level of Care Eligibility Tool (LOCET), established uniform criteria which are utilized in the determination of level of care for nursing facility services (*Louisiana Register*, Volume 32, Number 11). The Office of Aging and Adult Services now proposes to amend the November 20, 2006 Rule to provide further clarification regarding the level of care determination for nursing facility admission.

This action is being taken to promote the well-being of Louisiana citizens by clarifying the criteria and tools utilized for the level of care determination for nursing facility admission and continued stay. It is anticipated that the implementation of this Emergency Rule will have no programmatic costs for state fiscal year 2007-2008.

Effective December 1, 2007, the Department of Health and Hospitals, Office of Aging and Adult Services amends the provisions of the November 20, 2006 Rule governing the level of care determination for nursing facility admission and continued stay.

#### Title 50

### Public Health—Medical Assistance

#### Part II. Medical Assistance Program

##### Subpart 3. Standards for Payment

#### Chapter 101. Standards for Payment for Nursing Facilities

##### Subchapter G. Levels of Care

#### §10154. Determination of Nursing Facility Level of Care

A. ...

B. Definition of Nursing Facility Level of Care. The nursing facility level of care determination is based on the Resource Utilization Groups III (RUG-III) case mix system used in the Medicare Program and at least half of all state

Medicaid programs. RUG-III is a patient classification system that measures for the relative resource utilization of different nursing facility patient types [*Federal Register*, Volume 63, Number 91 (May 12, 1998)]. It is utilized to ensure consistency, uniformity, and reliability in making nursing facility level of care determinations.

1. RUG-III assigns each nursing facility resident to one of 44 distinct classification groups, based on the characteristics of the resident as assessed in the Nursing Home Minimum Data Set (MDS), so as to predict the resources expected to be used to meet the resident's functional support requirements and medical needs. The Long Term Care Resident Assessment Instrument User's Manual for the MDS explains how resident characteristics are used to assign an individual to a RUG-III classification.

2. Medicare presumes that individuals assigned to the upper 26 of 44 RUG-III classification groups meet the skilled nursing facility level of care definition set forth in federal law. However, states have the discretion to establish their own definitions of nursing facility level of care for purposes of the Medicaid Program.

3. Louisiana defines nursing facility level of care for Medicaid eligible individuals as the care required by individuals with needs greater than those identified by the lowest of the RUG-III classification groups (*i.e.*, Physical Function Reduced Group A, with or without rehabilitation, also known as PA1 and PA2). Individuals determined to be in any of the upper 42 of 44 RUG-III classification groups meet the level of care for nursing facility admission and/or continued stay for the purposes of the Louisiana Medicaid Program.

C. Level of Care Determination. The Level of Care Evaluation Tool (LOCET) is used to determine whether an individual meets the nursing facility level of care. The LOCET is derived from selected information in the Minimum Data Set (MDS), which is the standardized assessment tool used by Medicare to assign nursing facility residents to a RUG-III classification group. Consistent with the standard of nursing facility level of care defined in Paragraph B, the MDS data elements included in LOCET are those necessary to determine whether an individual would be assigned to a RUG-III category other than PA1 or PA2. To make this assessment, LOCET questions address the individual's need for assistance with the activities of daily living; cognitive function; skilled rehabilitative services; physician involvement; behavior; and certain treatment and conditions.

1. The LOCET information must be provided by the applicant or someone who is sufficiently familiar with the applicant to be able to provide all required information completely and accurately.

D. Service Dependency. Individuals who are currently receiving Medicaid covered nursing facility services and who demonstrate a continued need for these services, are deemed to meet the definition set forth in Paragraph B for purposes of continued eligibility for those services.

E. Supporting Documentation. As directed by the Department, applicants may be required to submit documentation necessary to support the determination of nursing facility level of care.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Division of Long Term Supports and Services, LR 32:2082 (November 2006), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:

Interested persons may submit written comments to Hugh Eley, Office of Aging and Adult Services, P.O. Box 2031, Baton Rouge, LA 70821-2031. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Roxane A. Townsend, M.D.  
Secretary

0711#065

## DECLARATION OF EMERGENCY

### Department of Social Services Office of Community Services

#### Allocation of Hurricane Relief Funds Supplemental Appropriation (LAC 67:V.717)

The Department of Social Services (DSS), Office of Community Services (OCS), has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953(B) to adopt LAC 67:V.Section 717, Allocation of Hurricane Relief Funds Supplemental Appropriation effective November 18, 2007. This action is necessary to extend the original Emergency Rule that was effective July 21, 2007, but will expire before the final Rule is published. This Emergency Rule shall remain in effect for 120 days or until the publication of the final Rule in November 2007, whichever comes first.

Under the Department of Defense Appropriations Act (H.R. 2863), \$220,901,534 has been allocated to Louisiana in a supplemental appropriation to Social Service Block Grant funds for necessary expenses related to the consequences of hurricanes in the Gulf of Mexico in calendar year 2005. In addition to other uses permitted by Title XX of the Social Security Act, funds appropriated under this heading may be used for health services, including mental health services, and for repair, renovation and construction of health facilities, including mental health facilities. It recognizes that the hurricanes in the Gulf of Mexico in calendar year 2005 have imposed extreme demands for social and health care services in affected states. States may use SSBG funds for a wide array of human services. The Administration for Children and Families, (ACF) approved a waiver of the provisions under Section 2005 (a) of the Social Security Act on June 2, 2006 to allow the use of SSBG Supplemental funds for the rebuilding and construction of childcare facilities in Louisiana.

The Office of Community Services proposes to enter into contracts, memoranda of understanding, or other agreements with the entities listed in this rule including but not limited to such services as health services, including mental health services, for repair, renovation, and construction of facilities, including Class A child care facilities and mental health facilities, intensive benefits, and case management for the citizens of this state effected by the hurricanes.

Emergency action is necessary due to imminent peril to public health as the hurricanes in the Gulf of Mexico in calendar year 2005 have imposed extreme demands for social and health care services. SSBG funds may be used for a wide array of human services and the supplemental appropriation must be expended by September 30, 2009.

Two public hearings were held in accordance with SSBG rules and no comments were received.

#### **Title 67**

### **SOCIAL SERVICES**

#### **Part V. Office of Community Services**

#### **Chapter 7. Social Services Block Grant**

#### **§717. Allocation of Hurricane Relief Funds SSBG**

##### **Supplemental Appropriation**

##### **A. Purpose, Need, and Eligibility**

1. Under the Department of Defense Appropriations Act (H.R. 2863), \$220,901,534 has been allocated to Louisiana in a supplemental appropriation to Social Service Block Grant (SSBG) funds for necessary expenses related to the consequences of hurricanes in the Gulf of Mexico in calendar year 2005. In addition to other uses permitted by Title XX of the Social Security Act, funds appropriated under this heading may be used for health services, including mental health services, and for repair, renovation and construction of facilities, including mental health facilities. The Administration for Children and Families, (ACF) approved a waiver of the provisions under Section 2005 (a) of the Social Security Act on June 2, 2006 to allow the use of SSBG Supplemental funds for the rebuilding and construction of childcare facilities in Louisiana.

2. The Office of Community Services (OCS) proposes to enter into contracts, memoranda of understanding, or other agreements with the entities listed in this rule including but not limited to such services as health services, including mental health services, for repair, renovation, and construction of facilities, including Class A child care facilities and mental health facilities, intensive benefits, and case management for the citizens of this state effected by the hurricanes. This Rule is effective for the SSBG allotment of federal fiscal year 2006.

3. It recognizes that the hurricanes in the Gulf of Mexico in calendar year 2005 have imposed extreme demands for social and health care services in affected states. States may use SSBG funds for a wide array of human services.

4. Because of the nature of the natural disaster, many affected individuals and families will not have in their possession customary documentation of their economic status to substantiate eligibility for SSBG supported services. Also, many individuals or families who may not have been eligible for assistance prior to the hurricanes may be, because of the devastation, eligible now. Therefore, "presumptive eligibility" determinations may be made based on applicant residence in known areas of devastation at the time of hurricane Katrina (H Katrina) or hurricane Rita (H Rita) or post-hurricane experience of affected individuals or families. Each entity that receives the SSBG funding can have additional or different eligibility requirements.

5. The following areas to be addressed include:

a. the health care needs of people affected by the hurricanes in the Gulf of Mexico in calendar year 2005 and who lack health insurance or other adequate access to care

and to help health care create a 'safety net.' This would include intended uses of these funds in areas of mental health service provision and provision for substance and addictive disorder interventions and services;

b. expanding services to meet the needs of families in the child welfare system in the areas of foster care, adoption, prevention, intervention, and protective services in child welfare;

c. institutions serving these populations in order to build community health centers, rural hospitals and clinics, community mental health centers, public hospitals, and other providers with substantial percentages of uninsured patients. Funds may be made available for repairs and reconstruction needed to allow health centers and similar providers to resume or expand operations, or to help key providers meet salary and other costs associated with resuming or restoring health services;

d. providing social service delivery and case management services to families in order to assist with identification of housing needs, development of individualized recovery plans and referral of families to available disaster relief services, provide for case management and follow-up with families, and to provide for direct emergency assistance in human services;

e. restoring critical child care services will support families as they return to work in hurricane affected parishes. Child care supports are vital to reestablishing a workforce and strengthening our state's economy. Child care is a critical need to promote independence and safety of families and children. Restoring the child care infrastructure is a current need in Louisiana. Funds will be available to rebuild the child care infrastructure by repairing and/or building Class A child care centers and providing training and technical assistance necessary in attracting and retaining a child care workforce.

##### **B. Department of Social Services**

1. Child Welfare Services—Foster Care, Adoption, Prevention, Intervention and Protective Services. Services will include anger management, parenting skills, counseling, etc. Visitation expenses include travel for the foster child and foster parent/caretaker from their displaced location to the birthparent's location, lodging, and meals during the travel. This includes travel both within and outside of Louisiana. It is estimated that 2/3 of impacted children lost at least a significant portion or all of their personal belongings that have yet to be replaced. These were possessions lost or damaged during the time during and after H Katrina or H Rita. These funds will be used in this arena. These funds will be used to provide for the youth effected by H Katrina or H Rita in OCS independence programs. These are programs used to assist children aging out of foster care custody and who have greater needs for transitional assistance than is typically provided, especially in the aftermath of the upheaval and displacement brought on by the storms of 2005. These funds will be used for foster care reunification services, as additional demands for such services are felt as a result and impact on the child welfare system of services due to H Katrina and H Rita. After most disasters, there is an evidenced increase in abuse and/or neglect as well as disruptions in foster care. Such funds will be used to obtain trauma-related services to help stabilize placements and prevent disruptions by providing increased service access for

family services, respite care, counseling, parenting classes, etc.

2. **Child Care Services.** Louisiana must rebuild the child care infrastructure in the hurricane affected parishes to assist families in returning to work while ensuring their children receive quality child care. To meet the critical need for child care in Louisiana, DSS/OFS will implement a child care support system to rebuild the child care sector. This will be done by three initiatives.

a. **Training and Technical Assistance for Child Care Providers.** The objective of this program is to provide intensive training and technical assistance for current and prospective child care providers to increase the supply of child care businesses opening and reopening in the hurricane affected areas. Training and technical assistance will also be provided to current and prospective child care providers and other professionals engaged in the system. The services will be available in Calcasieu, Cameron, Orleans, Jefferson, Plaquemines, St. Bernard, St. Tammany and Washington Parishes.

b. **Furnishing Child Care Centers Program.** This component will offer a program for equipping, furnishing, and supplying Class A Child Care centers whose licenses were suspended due to hurricane-related damage and have reopened, Class A centers in the process of opening or reopening, or Class A centers being constructed. An assessment of each center will be conducted and a priority for equipping Class A child care centers will be established. Furnishings, equipment and supplies include but are not limited to curriculum, books, furniture, appliances, office equipment, developmentally and age appropriate play equipment for both indoor and outdoor space and other items appropriate to the operation of a Class A licensed day care center.

i. Eligibility will be limited to the Class A child care centers that are currently participating in the Child Care Assistance Program (CCAP) funding; those reopening, that participated in the CCAP within a year prior to August 2005; or for those new Class A child care centers that have opened since August 29, 2005, and are committing to serve CCAP eligible children within 60 days of opening for business.

ii. The program will be offered in Calcasieu, Cameron, Orleans, Jefferson, Plaquemines, St. Bernard, St. Tammany and Washington parishes.

iii. Eligible expenses dated October 1, 2005 or after will be reimbursable. Eligible reimbursable expenses are those not covered by other reimbursements, such as insurance and other state or federal funds.

iv. Class A child care centers participating in this program must agree to accept all requirements as defined by SSBG and the state, including federal and state interest.

c. **Child Care Facilities Restoration Fund:** This program will provide funds for repair and/or construction of Class A child care centers in hurricane devastated parishes Calcasieu, Cameron, Orleans, Jefferson, Plaquemines, St. Bernard, St. Tammany and Washington. The state must apply its appropriate administrative standards when issuing sub awards to guarantee the protection and disposition of real estate rebuilt, constructed or purchased with grant funds and the state is also required to file a Notice of Federal Interest document to officially recognize the Federal Government's continuing financial interest in the property. The minimum

eligibility criteria for the Child Care Facilities will include the following:

i. previously held Class A license or agree to become a Class A licensed facility and agree to maintain a Class A license;

ii. for Class A centers that previously held a Class A license, have served children subsidized with CCAP funds within 12 months prior to August 2005 and commit to doing so moving forward, and provide assurance that SSBG funding along with any other identified funding will allow the center to reopen and serve children;

iii. for an entity wishing to open a new Class A child care center, must declare intention to serve children subsidized with CCAP funding and provide assurance that SSBG funding along with any other identified funding will allow the center to reopen and serve children;

iv. must provide evidence of current demand for services;

v. must provide evidence of capacity to provide quality child care services;

vi. must agree to accept all requirements as defined by SSBG and the state including federal and state interest;

vii. eligible expenses dated October 1, 2005 or after will be reimbursable. Eligible reimbursable expenses are those not covered by other reimbursements, such as insurance and other state or federal funds.

#### C. Department of Health and Hospitals

##### 1. Behavioral Health Services

a. Funds shall be used to restore and expand mental health services, substance abuse treatment and prevention services and developmental disability services as follows:

i. immediate intervention—crisis response system;

ii. substance abuse treatment and prevention;

iii. behavioral health services for children and adolescents;

iv. preventing or reducing inappropriate institutional care;

v. behavioral health program restoration and resumption;

vii. health care work force; and

vii. operational tools

2. **Preventive and Primary Care.** Funds shall be used to issue grant awards to parishes as bridge funding to restore and develop comprehensive and integrated primary, preventive and behavioral health care services, with an emphasis on restoring safety net services for the uninsured and underinsured.

#### D. Louisiana State University Health Sciences Center (LSU-HSC)

1. Funds Allocated to LSU. HSC would be used as follows:

a. keep the healthcare workforce intact by retaining faculty and residents;

b. set up primary care clinics across the city with funding for salaries for dentists, physicians, nurses and allied health personnel;

c. expand capabilities to address psychiatric needs in New Orleans and surrounding areas;

d. support the general dentistry residency, oral and maxillofacial surgery residency, and oral medicine programs

that provide preventive and primary care to the uninsured at multiple sites in the state;

e. prepare an adequate number of allied health professionals who can function in primary, secondary, and tertiary care through the School of Allied Health Professions. The LSUHSC-New Orleans is a primary source of graduate level practitioners in the areas of Physical Therapy, Occupational Therapy, Speech and Language Pathology, Audiology, Medical Technology, Cardiopulmonary Technology, and Rehabilitation Counseling for New Orleans and the state of Louisiana;

f. resume Early Intervention Institute and the Human Development Center direct service, consultative, and advocacy programs for individuals with disabilities. Reestablishing these services will ensure maintenance of high-quality health care educational experiences for individuals who work with these citizens who represent a portion of our population that is typically uninsured, underserved, and at the greatest risk for developing physical and mental problems.

#### E. LSU Health Care Services Division (HCS D)

1. Funding to the HCS D in the current fiscal year will enable the division to continue providing the following services:

a. the enhancement of primary care services at the regional hospitals to accommodate the population shifts which have occurred;

b. the patient pharmaceutical procurement program which matches needy patients with low cost medications that are essential to proper management of such conditions as diabetes, hypertension, asthma, HIV and asthma which have the effect of preventing further and or rapid development of the disease;

c. provide needed financing for eight neighborhood health units currently under development for placement in New Orleans;

d. continued funding of the EMED currently at the New Orleans Convention Center;

e. funding for the Level I Trauma Service operational costs anticipated at the Elmwood Hospital location;

f. Provide the HCS D hospitals with the ability to continue its current level of support for Mental and Behavioral Health Programs.

#### F. Louisiana Family Recovery Corps

1. The Department of Social Services, Office of Community Services (DSS/OCS) will contract with the Louisiana Family Recovery Corps (LFRC) to provide (SSBG) approved services to individuals and families displaced by Hurricanes Katrina or Rita through programs developed by LFRC. The LFRC, an independent non-profit organization, was created to mobilize and coordinate humanitarian services to displaced Louisiana families in the wake of these disasters.

2. Eligibility for SSBG approved services is limited to individuals and families that were displaced as a result of Hurricane Katrina or Hurricane Rita. LFRC, in coordination with the department, is authorized to develop programs with more restrictive eligibility requirements than those provided above, including but not limited to financial eligibility, pre-storm residence, current or prospective residence, age, and disability.

3. Eligible services are those directed at the goals of:

a. achieving or maintaining economic self-support to prevent, reduce, or eliminate dependency;

b. achieving or maintaining self-sufficiency, including reduction or prevention of dependency;

c. preventing or remedying neglect, abuse, or exploitation of children and adults unable to protect their own interests, or preserving, rehabilitating, or reuniting families;

d. preventing or reducing inappropriate institutional care by providing for community-based care, home-based care, or other forms of less intensive care; and,

e. securing referral or admission for institutional care when other forms of care are not appropriate, or providing services to individuals in institutions.

4. LFRC, in coordination with the department, is authorized to develop programs that provide services that are necessary to address the consequences of the hurricanes for the eligible population and are directed at the goals of SSBG.

#### G. Tulane University Health Sciences Center

1. Tulane University will help sustain the health care safety net in New Orleans, as well as assist in responding to the new health care crisis in this community. These funds may be utilized in the following areas:

a. sustain, and when needed, enhance capacity to provide primary care, emergency care, public health preparedness and training, adult and child psychiatry, women's health, children's health, health equality, environmental health, infectious diseases to the to under and uninsured;

b. maintain a high-quality biomedical workforce in the greater New Orleans region through retention of existing healthcare faculty and residents;

c. support for the School of Public Health and Tropical Medicine;

d. retention and establishment of primary care clinics;

e. support for Cancer Center and Gene Therapy Center;

f. support for clinical research and supporting faculty and staff.

#### H. Governor's Office of Elderly Affairs

1. The Department of Social Services will enter into an agreement with the Governor's Office of Elderly Affairs to provide necessary services to seniors as a result of hurricanes Rita or Katrina of 2005.

2. Eligibility for SSBG approved services is as follows:

a. age 60 or over; and

b. individuals with an adult onset disability who have a need for living assistance;

c. clients must have resided in one of the 37 federally declared disaster parishes at the time of hurricanes Katrina and Rita of 2005. Those parishes are Acadia, Allen, Ascension, Assumption, Calcasieu, Cameron, Beauregard, East Baton Rouge, East Feliciana, Evangeline, Iberia, Iberville, Jefferson, Jefferson Davis, Lafayette, Lafourche, Livingston, Orleans, Plaquemines, Pointe Coupee, Sabine, St. Bernard, St. Charles, St. Helena, St. James, St. John, St. Landry, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne, Vermilion, Vernon, Washington, West Baton Rouge, and West Feliciana Parish.

3. Services to be provided include the following.

a. Material Aid—assistance includes but is not limited to assistance with prescription drugs not covered by another program, adult diapers or other personal hygiene items, basic furniture items (beds or bedding), assistance devices, such as walkers, canes, wheelchairs, and other goods such medical supplies.

b. Minor home repairs needed in order to make homes safe and livable, such as replacement of windows, doors, door locks, minor roof repairs, flooring replacement, replacement of insulation, repairs to heating and cooling systems, and other minor repairs.

c. Safety and access installations includes the installation of access ramps, safety grab bars in bathrooms.

d. Chore Services—necessary services could include, but are not limited to heavy indoor and outdoor housework such as mold removal, drapery removal/cleaning/re-installation, carpet sanitization, floor stripping and re-conditioning, debris removal, tree-trimming, or other lawn clean-up. (Routine lawn care or housework is not an allowable expense.)

e. Information and Assistance (Information and Referral)—this service assesses the client and determines what type of assistance is needed or makes provisions to provide this service. Most clients will only receive one unit of this service not to exceed \$25, which includes the agency placing this information into *SAMS* the existing client tracking system for GOEA.

f. Transportation—this service will provide door-to-door assistance for clients when there is no other comparable service available. The client would make a call to reserve transport for medical appointments, to merchants who provide basic needs and any location where an applicant has an appointment for services (example: food stamp office, Road Home Center, local Council on Aging, etc.

g. Home Care—this service will provide supervision and companionship in a home setting, not an institution, to ensure the health and safety of a senior or an individual with onset disabilities who cannot be left alone.

h. Home Delivered Meals—home-delivered meals are those services or activities designed to prepare and deliver one or more meals a day to an individual's residence in order to prevent institutionalization, malnutrition, and feelings of isolation.

i. Other Needs—this category will serve clients with a service not being provided by any other source.

#### I. Orleans Metro Housing

1. The Department of Social Services will contract with the Orleans Metro Housing (local non-profit) to assist hurricane-affected clients in Orleans Parish, in locating suitable affordable housing in Orleans Parish.

2. To be eligible for services, clients must have lived in Orleans Parish prior to the storms of 2005. There are no age or income or other requirements.

3. Services provided by Orleans Metro Housing, include; community outreach (through local churches, door-to-door in neighborhoods, etc.) to those in need of housing assistance in Orleans Parish, assisting clients in determining the types of housing that will best suit their needs and budget, matching up clients with available housing, maintaining an up-to-date inventory of sale and rental

properties in the parish, referring clients to other non-profit home-buying programs if determined client has sufficient income, referring clients to agencies that provide financial assistance for housing and household expenses, negotiating with leasers or landlords on behalf of clients, and other related services.

AUTHORITY NOTE: Promulgated in accordance with Title XX of the Social Security Act and Department of Defense Appropriations Act (H.R. 2863).

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Services, LR 33:

Ann Silverberg Williamson  
Secretary

0711#082

## DECLARATION OF EMERGENCY

### Department of Social Services Office of Family Support

Child Care Assistance Program—LA Pathways  
(LAC 67:III.5125 and 5127)

Editor's Note: This Emergency Rule was originally promulgated on pages 1844-1846 of the September 2007 edition of the *Louisiana Register* and is being repromulgated to correct printing errors.

The Department of Social Services, Office of Family Support, has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953(B) to adopt LAC 67:III Subpart 12, Chapter 51, Child Care Assistance Program, Subchapter D Louisiana Pathways Child Care Career Development System (LA Pathways). This Emergency Rule shall be effective upon approval of the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs or the passage of 60 days following publication whichever occurs first, and shall remain in effect until the expiration of the maximum period allowed under the Administrative Procedure Act or the adoption of the final Rule, whichever comes first.

This Emergency Rule is necessary to effectuate the intent of the legislators in Act 394, Regular Session 2007. Revised Statute 47: 6103 clearly states that the Senate Committee of Revenue and Fiscal Affairs and the House Committee on Ways and Means have 60 days after publication of the Emergency Rule to take action on such Rule. Additionally, by statute any Rule needs to be effective by December 1, 2007, in order to be applicable to the tax year beginning January 1, 2008. A delay in promulgating this Rule would have an adverse impact on the entire School Readiness Tax Credit Program.

#### Title 67

#### SOCIAL SERVICES

#### Part III. Office of Family Support

#### Subpart 12. Child Care Assistance

#### Chapter 51. Child Care Assistance Program

#### Subchapter D. Louisiana Pathways Child Care Career Development System (LA Pathways)

#### §5125. Authority

A. LA Pathways is the state practitioner registry maintained by the Department of Social Services. LA Pathways offers child care staff, including directors,

teachers, assistant teachers and other classroom staff, a formal mechanism to track their training and educational attainment, experience and professional affiliation in the field of early care and education.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Part 98 and R.S. 36:474 and R.S. 47:6101 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 34:

**§5127. Participation in LA Pathways**

A. Any individual working or planning to work in the child care industry is eligible to enroll in LA Pathways by completing an application and forwarding the required documents. An application for enrollment and information about enrollment is available at <http://pathways.louisiana.gov>/or by phoning the Division of Child Care and Early Childhood Education at 225-342-0694.

LA Pathways will register child care directors and staff according to requirements based on training and education, experience and professional activities, as approved by the Department of Social Services. Participation is voluntary.

B. Requirement for the Administrator Track for LA Pathways

Child Care Career Ladder Titles	Training and Education Requirements	Experience Requirements	Professional Activity Requirements
Assistant Director I	annual training as required by Licensing Minimum Standard	none	Encourage to participate in an early childhood professional organization
Assistant Director II	60 clock hours in approved core knowledge (CDA) subject areas including 6 hours in regulations	minimum 6 months	Encourage to participate in an early childhood professional organization
Assistant Director III	90 clock hours in approved core knowledge (CDA) subject areas including 15 hours in approved Administrative Training Categories	minimum 1 year	Encourage to participate in an early childhood professional organization
Director	as required by Licensing Minimum Standards	as required by licensing	Encourage to participate in an early childhood professional organization
Director I	CDA Credential or approved early childhood diploma and 30 clock hrs. in approved Administrative Training Categories or related associate degree or 30 hours toward associate degree with 4 college courses in early childhood or child development	minimum 1 year	Membership in an early childhood professional organization.

Child Care Career Ladder Titles	Training and Education Requirements	Experience Requirements	Professional Activity Requirements
Director II	CDA Credential or approved early childhood diploma and 45 clock hrs. in approved Administrative Training Categories or National Administrative Credential or associate degree in early childhood or child development or related associate degree with 4 college courses in early childhood or child development or related bachelor degree with 3 college courses in early childhood or child development	minimum 18 months	Membership in an early childhood professional organization and service to the profession such as: serving on a board or committee, presenting at a conference, participating as a CDA advisor or mentor, attendance at a conference or professional event
Director III Administrator Certificate To receive an Administrator Certificate you must have 75 clock hours of instruction in approved Administrative Training Categories 2 college courses in approved administration can be substituted for the Administrator Certificate	CDA Credential or approved early childhood diploma and Administrator Certificate or associate degree in child development or early childhood and Administrator Certificate or bachelor degree in early childhood or child development of which 3 college courses focus on infants and toddlers and Administrator Certificate or related bachelor degree with 6 college courses in early childhood or child development of which 3 courses focus on infants and toddlers and Administrator Certificate	minimum 2 years	Membership in an early childhood professional organization and service to the profession such as: serving on a board or committee, presenting at a conference, participating as a CDA mentor or advisor, attendance at a conference or professional event

Child Care Career Ladder Titles	Training and Education Requirements	Experience Requirements	Professional Activity Requirements
Level VIII Director IV	master degree in early childhood, child development or early childhood administration of which 3 courses focus on infants and toddlers and Administrator Certificate or related masters degree with 8 college courses in early childhood or child development of which 3 courses focus on infants and toddlers and Administrator Certificate	minimum 2 years	Membership in an early childhood professional organization and service to the profession such as: serving on a board or committee, presenting at a conference, participating as a CDA mentor or advisor, attendance at a conference or professional event

C. Requirements for the Classroom Track for LA Pathways.

Child Care Career Ladder Titles	Training and Education Requirements	Experience Requirements	Professional Activity Requirements
Child Care Staff I	as required by licensing regulations	none	encouraged to participate in an early childhood professional organization
Child Care Staff II	12 clock hours of instruction in approved core knowledge (CDA) subject areas	minimum 6 months	encouraged to participate in an early childhood professional organization
Child Care Staff III	30 clock hours of instruction in approved core knowledge (CDA) subject areas	minimum 1 year	encouraged to participate in an early childhood professional organization
Child Care Staff IV	60 clock hours of instruction in approved core knowledge (CDA) subject areas	minimum 1 year	encouraged to participate in an early childhood professional organization
Child Care Assistant Teacher I	90 clock hours of instruction in approved core knowledge (CDA) subject areas	minimum 1 year	encouraged to participate in an early childhood professional organization
Child Care Assistant Teacher II	120 clock hours of instruction in approved core knowledge (CDA) subject areas	minimum 1 year	encouraged to participate in an early childhood professional organization
Child Care Teacher I	CDA credential In preschool or infant/toddler specialization or approved early childhood diploma	minimum 1 year	encouraged to participate in an early childhood professional organization

Child Care Career Ladder Titles	Training and Education Requirements	Experience Requirements	Professional Activity Requirements
Child Care Teacher II	CDA credential or approved early childhood diploma and 9 CEU's or 2 early childhood college courses or 30 hours toward associate degree with 4 college courses in early childhood or child development or related associate degree	minimum 2 years	membership in an early childhood professional organization and service to the profession such as: committee or board membership, service as a CDA advisor or mentor, attendance at a professional conference or event, conference presentation, advocacy and leadership activities
Child Care Teacher III	associate degree in early childhood or child development or related associate degree with 4 college courses in early childhood or child development or bachelor degree in early childhood or child development or related bachelor degree with 3 college courses in early childhood or child development	minimum 2 years	membership in an early childhood professional organization and service to the profession such as: committee or board membership, service as a CDA advisor or mentor, attendance at a professional conference or event, conference presentation, advocacy and leadership activities
Child Care Teacher IV	bachelor degree in early childhood or child development of which 3 college courses focus on infants and toddlers or related bachelor degree with 6 early childhood or child development college courses of which 3 focus on infants and toddlers	minimum 2 years	membership in an early childhood professional organization and service to the profession such as: committee or board membership, service as a CDA advisor or mentor, attendance at a professional conference or event, conference presentation, advocacy and leadership activities
Child Care Master Teacher	graduate degree in early childhood or child development or unrelated graduate degree with 4 early childhood or child development college courses	minimum 2 years	membership in an early childhood professional organization and service to the profession such as: committee or board membership, service as a CDA advisor or mentor, attendance at a professional conference or event, conference presentation, advocacy and leadership activities

D. Qualification for the School Readiness Tax Credit for child care directors and staff.

1. The Department of Social Services shall provide information necessary for the Secretary of the Department of Revenue to determine and/or verify the director and staff levels for earning the credit.

2. Child Care Director Levels

a. Directors who are classified as Director I by LA Pathways are classified as meeting Level I qualifications for purposes of this credit.

b. Directors who are classified as Director II by LA Pathways are classified as meeting Level II qualifications for purposes of this credit.

c. Directors who are classified as Director III by LA Pathways are classified as meeting Level III qualifications for purposes of this credit.

d. Directors who are classified as Director IV by LA Pathways are classified as meeting Level IV qualifications for purposes of this credit.

3. Child Care Staff Levels

a. Staff members who are classified as Child Care Teacher I by LA Pathways are classified as meeting Level I requirements for purposes of this credit.

b. Staff members who are classified as Child Care Teacher II by LA Pathways are classified as meeting Level II requirements for purposes of this credit.

c. Staff members who are classified as Child Care Teacher III by LA Pathways are classified as meeting Level III requirements for purposes of this credit.

d. Staff members who are classified as Child Care Teacher IV or Child Care Master Teacher by LA Pathways are classified as meeting Level IV requirements for purposes of this credit.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Part 98 and R.S. 36:474 and R.S. 47:6101 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 34:

Ann S. Williamson  
Secretary

0711#014

## DECLARATION OF EMERGENCY

### Department of Social Services Office of Family Support

Child Care Quality Rating System (LAC 67:III.5115-5123)

The Department of Social Services, Office of Family Support, has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953(B) to adopt LAC 67:III Subpart 12, Chapter 51, Child Care Assistance Program, Subchapter C, Child Care Quality Rating System (QRS) effective, December 15, 2007. This declaration is necessary to extend the original Emergency Rule effective August 17, 2007, since it is effective for a maximum of 120 days and will expire before the final Rule takes effect. (The final Rule will be published in the December 2007 issue.) This Rule shall remain in effect for a period of 120 days.

Adoption of Subchapter C, Quality Rating System (QRS), is pursuant to the authority granted to the Department by the Child Care and Development Fund (CCDF). As a result of

the devastation resulting from Hurricanes Katrina and Rita, child care centers in Louisiana have struggled to rebuild in affected areas. In other parts of the state, the centers have expanded their capacity to serve these displaced families. In an effort to guide child care centers as they restore critically needed child care services, the agency has established a quality rating system which uses licensing as the foundation and sets a continuum of quality indicators focused in the social-emotional needs of children. The Quality Rating System will provide a mechanism by which child care centers can be assessed regarding the level of quality care given. The QRS will also provide a guide for parents to choose higher settings of child care beyond basic licensure and will offer a structure for child care centers to communicate the level of quality provided in their facility.

This Declaration of Emergency is preceded by and shall replace the Declaration of Emergency effected May 1, 2007, and published in the May 2007 issue of the *Louisiana Register*.

## Title 67

### SOCIAL SERVICES

#### Part III. Office of Family Support

##### Subpart 12. Child Care Assistance

#### Chapter 51. Child Care Assistance Program Subchapter C. Child Care Quality Rating System

##### §5115. Authority

The Child Care Quality Rating System is established and administered under the authority of state and federal laws.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Part 98 and R.S.36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 33:

##### §5117. Definitions

*Approved Courses*—courses that are deemed approved by the department.

*Assistant Directors*—must be on site for a minimum of 20 hours per week for centers with an enrollment of 101 or more.

*Assistant Teachers*—any staff who cares for children at least 16 or more hours per week and is not a lead teacher and meets the assistant teacher criteria.

*Child Care Center*—a licensed day care center.

*Child Care Resource and Referral (CCR&R)*—a state and/or local organizations with whom the department has contracted to provide services to families, early childhood professionals, and communities statewide.

*Child Development Associate (CDA) Credential*—a nationally recognized credential which can be used to meet staff qualification requirements.

*Director*—an administrator who meets the director qualifications and is on-site a minimum of 30 hours per week. This requirement can be met by having one or more persons on site who meet these qualifications.

*Early Childhood Environment Rating Scale-Revised (ECERS-R)*—a research-based assessment tool that measures environmental indicators of quality in preschool classrooms with children ages 2.5–5 years of age.

*Environment Rating Scales (ERS)*—the assessment tools developed at Frank Porter Graham Child Development Institute at the University North Carolina that measure environmental indicators of quality. They include the Infant Toddler Environment Rating Scale-Revised (ITERS-R) and the Early Childhood Environment Rating Scale-Revised

(ECERS-R), as well as the School Age Care Environment Rating Scale (SACERS) for school age programs, and the Family Child Care Environment Rating Scale-Revised (FCCERS-R) for family child care homes.

*Group*—those children who are assigned for most of the day to a specific teacher and who occupy an individual classroom or well defined space that prevents intermingling of children from different groups within a larger group or area.

*Infant Toddler Environment Rating Scale-Revised (ITERS-R)*—a research-based assessment tool that measures environmental indicators of quality in preschool classrooms with children 0-2.5 years of age.

*Lead Teacher*—a teacher who has primary responsibility for a designated classroom including, planning and supervision and spends at least 25 hours a week in that classroom. All classrooms must have a lead teacher.

*Louisiana Pathways Child Care Career Development System*—the state practitioner registry maintained by the Department of Social Services and/or its contractor. LA Pathways registers child care directors and staff according to requirements based on training and education, experience, and professional activities, as approved by the Department of Social Services. Categories are established for child care staff, child care assistant teacher, child care teacher, child care assistant director and child care director. Information on LA Pathways can be found at <http://pathways.louisiana.gov/> or [www.dss.state.la.us](http://www.dss.state.la.us).

*Quality Rating System (QRS) Points*—points given in the Program, Staff Qualifications, Administrative Practices, and Family and Community Involvement areas. All items within a point must be verified to receive credit. The total points earned determine the star award at star rating 3, 4, and 5.

*Service Period*—the months within the calendar quarter for which a child received care.

*Social Emotional Subscales of the Environment Rating Scales*—a subscale of the ECERS-R and ITERS-R generated by the scores earned on the Language-Reasoning, Interaction and Program Structure subscales of the ECERS-R and the Listening and Talking, Interaction and Program Structure subscales of the ITERS-R. This new subscale score will be used to determine the ERS score for Program Points 1–4.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Part 98 and R.S.36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 33:

#### **§5119. Quality Rating System Requirements**

A. The Child Care Quality Rating System (QRS) is designed to assess levels of child care, support improvements of child care centers, and communicate the level of quality in early care and education programs. The QRS consists of five star ratings that can be earned by a licensed child care center, uses licensing as the foundation, and has four star ratings above Louisiana's licensing standards. The system components (Administrative Practices, Family and Community Involvement, Program, and Staff Qualifications) have indicators that must be achieved to earn the star rating.

1. Foundation One Star—to participate at the one-star level, a child care center shall have a license to operate and comply with standards as defined in LAC 48:I.5301-5354.

2. Foundation Two Star—to earn a two-star award, a child care center must meet all the standards for a Foundation One Star, have been in operation for six months, and meet the following.

- a. Administrative Practices
  - i. Written personnel policies including:
    - (a). operational hours;
    - (b). dress code;
    - (c). use of telephone; and
    - (d). schedule.
  - ii. Job descriptions that include a list of qualifications on file and are provided to all staff.
  - iii. Provide one staff benefit from the list of options below for all full-time staff. Staff benefit options:
    - (a). Employee health insurance or comparable health benefits;
    - (b). paid annual leave;
    - (c). paid sick leave;
    - (d). paid holidays;
    - (e). child care benefit/discount;
    - (f). bonus based on merit/achievement or education;
    - (g). retirement compensation;
    - (h). annual increments based on merit;
    - (i). tuition reimbursement, and other related educational expenses such as books, travel, fees, substitutes;
    - (j). differential shift pay;
    - (k). flextime;
    - (l). pay professional association membership fee.
- b. Family and Community Involvement
  - i. Parent provided pre-enrollment visit and center tour.
  - ii. Give every parent enrolling a child a list of community resources including, but not limited to, LaCHIP, Medicaid, child care assistance, housing assistance, food stamps and information on a child's medical home.
- c. Program
  - i. Make four of the following activity areas available daily:
    - (a). art and creative play;
    - (b). children's books;
    - (c). blocks and block building;
    - (d). manipulatives; and
    - (e). family living and dramatic play.
  - ii. Complete a self assessment of program and develop an improvement plan.
- d. Staff Qualifications
  - i. Directors and teachers must join and maintain a current record with the Louisiana Pathways Child Care Career Development System Registry. A director must complete three hours of Environment Rating Scales training.
  - ii. Director (on-site)
    - (a). Three semester hour credits in care of young children or child development<sup>1</sup> and
    - (b). Three semester hour credits in administration<sup>2</sup> and
    - (c). One year experience in teaching young children in an early childhood program.
  - iii. Assistant Director
    - (a). Three semester hour credits in care of young children or child development.<sup>1</sup>

iv. Teacher. Seventy-five percent of lead teachers must meet one of the following:

(a). complete three semester hour credits course in care of young children or child development<sup>1</sup> from a list of approved courses or enroll in the course and complete within one year of employment.

3. Point Standards for child care centers seeking Three Star rating, Four Star rating, and Five Star ratings. To achieve a higher rating, a Child Care Center must meet all requirements of the Foundation Two Star and earn points in the Program and Staff Qualifications by meeting the

requirements listed below. At least one point must be earned in each Program and Staff Qualifications. The Quality Point referenced in Subparagraph 3.c. may also be earned. The total number of points will determine the Star rating awarded to the center.

Total Number of Points	Star Rating
3-5 points	Three Stars
6-9 points	Four Stars
10-11 points	Five Stars

a. Program

Points	Criteria								
1	An average of 3.75 on the designated social-emotional subscale of the Environment Rating Scales (ERS) <sup>3</sup> , with no one classroom score lower than 3.0 on the subscale.								
2	An average of 4.0 on the designated social-emotional subscale of the ERS <sup>3</sup> with no one classroom score lower than 3.0 on the subscale.								
3	<ol style="list-style-type: none"> <li>An average of 4.25 on the designated social-emotional subscale of the ERS<sup>3</sup> with no one classroom score lower than 3.25 on the subscale.</li> <li>Staff: Child Ratio and Group Size <table border="1"> <tr> <td>0-12 months 1:4,8</td> <td>25-36 months 1:8, 16</td> <td>4 yrs 1:12, 24</td> <td>6 yrs &amp; up 1:20, 30</td> </tr> <tr> <td>13-24 months 1:6,12</td> <td>3 yrs 1:10, 20</td> <td>5 yrs 1:15, 30</td> <td></td> </tr> </table> </li> <li>Written transition procedures for children moving within a program or to other programs or beginning school.</li> </ol>	0-12 months 1:4,8	25-36 months 1:8, 16	4 yrs 1:12, 24	6 yrs & up 1:20, 30	13-24 months 1:6,12	3 yrs 1:10, 20	5 yrs 1:15, 30	
0-12 months 1:4,8	25-36 months 1:8, 16	4 yrs 1:12, 24	6 yrs & up 1:20, 30						
13-24 months 1:6,12	3 yrs 1:10, 20	5 yrs 1:15, 30							
4	<ol style="list-style-type: none"> <li>An average of 4.5 on the designated social-emotional subscale of the ERS with no one classroom score lower than 3.5 on the overall ERS.</li> <li>Complete screening for social-emotional development with instrument from recommended list for all children (0-5 yrs.) within 45 calendar days of enrollment and annually thereafter. Conference with parents to review results and provide a list of community resources.</li> <li>Staff: Child Ratio and Group Size <table border="1"> <tr> <td>0-12 months 1:4, 8</td> <td>25-36 months 1:8, 16</td> <td>4 yrs 1:12, 24</td> <td>6 yrs &amp; up 1:20, 30</td> </tr> <tr> <td>13-24 months 1:6, 12</td> <td>3 yrs 1:10, 20</td> <td>5 yrs 1:15, 30</td> <td></td> </tr> </table> </li> <li>Written transition procedures for children moving within a program or to other programs or beginning school.</li> </ol>	0-12 months 1:4, 8	25-36 months 1:8, 16	4 yrs 1:12, 24	6 yrs & up 1:20, 30	13-24 months 1:6, 12	3 yrs 1:10, 20	5 yrs 1:15, 30	
0-12 months 1:4, 8	25-36 months 1:8, 16	4 yrs 1:12, 24	6 yrs & up 1:20, 30						
13-24 months 1:6, 12	3 yrs 1:10, 20	5 yrs 1:15, 30							
5	<ol style="list-style-type: none"> <li>An average of 5.0 on the overall ERS, with no one classroom score lower than 4.0.</li> <li>Complete screening for social-emotional development with instrument from recommended list for all children (0-5 yrs.) within 45 calendar days of enrollment and annually thereafter. Conference with parents to review results and provide a list of community resources.</li> <li>Provide a plan for continuity of care for all children 0-36 months of age.</li> <li>Implementation of Louisiana's Early Learning Guidelines and Program Standards; Birth through Three, (DSS October 2006) and the Louisiana Standards for Programs Serving Four-Year-Old Children (DOE June 2003).</li> <li>Staff: Child Ratio and Group Size: <ul style="list-style-type: none"> <li>0-24 months 1:4, 8</li> <li>2 yrs 1:6, 12</li> <li>3 yrs 1:8, 16</li> <li>4 yrs 1:10, 20</li> <li>5 yrs 1:10, 20</li> <li>6 yrs and up 1:12, 24</li> </ul> </li> </ol>								

b. Staff Qualifications

Points	Criteria
1	<p>All teachers and directors complete three hours of ERS training.</p> <p>Director (on-site)</p> <ol style="list-style-type: none"> <li>Six semester hour credits in care of young children or child development<sup>1</sup>, and</li> <li>Three semester hour credits in administrative coursework<sup>2</sup>, and</li> <li>One year experience teaching young children in an early childhood program.</li> </ol> <p>Assistant Director</p> <p>Three semester hour credits in care of young children or child development.<sup>1</sup></p> <p>Lead Teacher</p> <p>All of Lead Teachers must complete three semester hour credits in care of young children or child development from a list of approved courses<sup>1</sup> or enroll in the course and complete within one year of employment.</p> <p>Assistant Teacher</p> <p>Fifty percent of Assistant Teachers must have completed or be enrolled in three semester hour credits in the care of young children or child development<sup>1</sup> and complete the course within one year of employment.</p>



Points	Criteria
2	<p>All teachers and directors complete three hours of ERS training.</p> <p>Director</p> <ol style="list-style-type: none"> <li>1. Nine semester hour credits in care of young children or child development<sup>1</sup>, and</li> <li>2. Three semester hour credits in administrative coursework<sup>2</sup>, and</li> <li>3. One year of teaching experience and one year teaching or administrative experience in an early childhood program.</li> </ol> <p>Assistant Director</p> <ol style="list-style-type: none"> <li>1. Three semester hour credits in care of young children or child development<sup>1</sup>, and</li> <li>2. Three semester hour credits in administrative coursework<sup>2</sup>, and</li> <li>3. One year experience in teaching young children in an early childhood program.</li> </ol> <p>Lead Teacher</p> <ol style="list-style-type: none"> <li>1. Seventy-five percent of Lead Teachers must have completed six semester hour credits in the care of young children or child development<sup>1</sup> from a list of approved courses or have completed three semester hour credits and be enrolled in an additional three semester hour credits in the care of young children, child development or related coursework<sup>1</sup> and complete within one year of employment, and</li> <li>2. One year full-time experience in an early childhood setting.</li> </ol> <p>Assistant Teacher</p> <p>50 percent of Assistant Teachers must have completed or be enrolled in three semester hour credits in the care of young children or child development<sup>1</sup> and complete the course within one year of employment.</p>
3	<p>Directors and all teachers complete six hours of ERS training. Directors and lead teachers complete training in social-emotional screening of children. Director completes training in Louisiana's Early Learning Guidelines and Program Standards Birth Through Three (DSS October 2005) and the LA Content Standards for Programs Serving Four-Year-Old Children (DOE June 2003).</p> <p>Director</p> <ol style="list-style-type: none"> <li>1. Twelve semester hours in care of young children or child development<sup>1</sup>, and</li> <li>2. Six semester hours of administrative coursework<sup>2</sup>, and</li> <li>3. One year teaching experience and 1 year administrative experience and one year teaching or administrative experience in an early childhood setting for a total of three years experience.</li> </ol> <p>Assistant Director</p> <ol style="list-style-type: none"> <li>1. Three semester hour credits in care of young children or child development<sup>1</sup>, and</li> <li>2. Three semester hour credits in administrative coursework<sup>2</sup>, and</li> <li>3. One year experience in teaching young children in an early childhood program.</li> </ol> <p>Lead Teacher</p> <ol style="list-style-type: none"> <li>1. Seventy-five percent of Lead Teachers must have completed nine semester hour credits in the care of young children or child development<sup>1</sup> from a list of approved courses or have completed six semester hour credits and be enrolled in an additional three semester hour credits in the care of young children, child development or related coursework<sup>1</sup> and complete within one year of employment, and</li> <li>2. One year full-time experience in an early childhood setting.</li> </ol> <p>Assistant Teacher</p> <p>50 percent Assistant Teachers must have completed three semester hour credits in the care of young children or child development<sup>1</sup>.</p>
4	<p>Directors and all teachers complete 6 hours of ERS training. Directors and all teachers complete training in social-emotional screening of children and developing individual instructional plans for children based on specific developmental needs. Directors and lead teachers complete training in Louisiana's Early Learning Guidelines and Program Standards Birth Through Three, (DSS October 2005) and the LA Content Standards for Programs Serving Four-Year-Old Children (DOE June 2003).</p> <p>Director</p> <ol style="list-style-type: none"> <li>1. Fifteen semester hour credits in the care of young children or child development<sup>1</sup>, and</li> <li>2. Six semester hour credits of administrative coursework<sup>2</sup>, and</li> <li>3. One year teaching experience and one year administrative experience and two years teaching and/or administrative experience in an early childhood setting for a total of four years experience.</li> </ol> <p>Assistant Director</p> <ol style="list-style-type: none"> <li>1. Three semester hour credits in care of young children or child development<sup>1</sup>, and</li> <li>2. Three semester hour credits in administrative coursework<sup>2</sup>, and</li> <li>3. One year experience in teaching young children in an early childhood program.</li> </ol> <p>Lead Teacher</p> <ol style="list-style-type: none"> <li>1. Seventy-five percent of Lead Teachers must have completed 12 semester hour credits in the care of young children or child development<sup>1</sup> from a list of approved courses or have completed nine semester hour credits and be enrolled in an additional three semester hour credits in the care of young children, child development or related coursework<sup>1</sup> and complete within one year of employment, and</li> <li>2. Two years full-time experience in an early childhood setting.</li> </ol> <p>Assistant Teacher</p> <p>All Assistant Teachers must have completed three semester hour credits in the care of young children or child development<sup>1</sup>.</p>

5	<p>Directors and all teachers complete six hours of ERS training. Directors and all teachers complete training in social-emotional screening of children and developing individual instructional plans for children based on specific developmental needs. Directors and all teachers complete training in Louisiana's Early Learning Guidelines and Program Standards Birth Through Three, (DSS October 2005) and the LA Content Standards for Programs Serving Four-Year-Old Children (DOE June 2003).</p> <p><b>Director</b></p> <ol style="list-style-type: none"> <li>1. Associate's degree in the care of young children, child development or related field, with specific coursework in infant-toddler care, care of exceptional children and care of school age children or equivalent such as Director III LA Pathways and/or including,</li> <li>2. Six semester hour credits or 75 hours of administrative training<sup>2</sup>, and</li> <li>3. One year teaching experience and one year administrative experience and three years teaching and/or administrative experience in an early childhood setting for a total of five years experience.</li> </ol> <p><b>Assistant Director</b></p> <ol style="list-style-type: none"> <li>1. Six semester hour credits in care of young children or child development<sup>1</sup>, and</li> <li>2. Three semester hour credits in administration<sup>2</sup>, and</li> <li>3. One year experience in teaching young children in an early childhood program.</li> </ol> <p><b>Lead Teacher</b></p> <ol style="list-style-type: none"> <li>1. All Lead Teachers must have six semester hour credits in the care of young children or child development<sup>1</sup> from a list of approved courses, and</li> <li>2. Seventy-five percent of Lead Teachers must have completed 15 semester hour credits in the care of young children or child development<sup>1</sup> from a list of approved courses or have completed 12 semester hour credits and be enrolled in an additional three semester hour credits in the care of young children, child development or related coursework<sup>1</sup> and complete within a year of employment, and</li> <li>3. Two years full-time experience in an early childhood setting for all teachers.</li> </ol> <p><b>Assistant Teacher</b></p> <p>All Assistant Teachers must have completed six semester hour credits in the care of young children or child development<sup>1</sup> or have completed three semester hour credits and be enrolled in an additional three semester hour credits in the care of young children, child development or related coursework<sup>1</sup> and complete within one year of employment.</p>
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c. An additional Quality Point can be earned by meeting additional requirements in both the Administrative Practices and the Family/Community Involvement areas.

Quality Point	
Points	Criteria
1	<p>Administrative Practices - meet three requirements below</p> <ol style="list-style-type: none"> <li>1. Provide four of the benefits from the list* of options below for all full time staff.</li> <li>2. Include grievance procedure and a professional conduct code for staff in written personnel policies.</li> <li>3. Pay scale based on education, experience, responsibilities and merit.</li> <li>4. Provide training to staff on cultural sensitivity.</li> <li>5. Written parent and staff confidentiality policy and provide training to staff</li> </ol> <p>and</p> <p>Family/Community Involvement - meet four requirements below</p> <ol style="list-style-type: none"> <li>1. Participate in meetings for directors provided by Resource and Referral agency at least quarterly, with the director or assistant director attending 50 percent of the meetings.</li> <li>2. Provide a complaint process for parents.</li> <li>3. Offer opportunity for a formal parent/teacher conference meeting annually.</li> <li>4. Provide an expanded list of local community resources to parents annually including, but not limited to, LaCHIP, Medicaid, child care assistance, housing assistance, food stamps and information on a child's medical home.</li> <li>5. Parent Advisory Council meets annually to review policies, procedures and parent handbook.</li> <li>6. One group meeting per year offered to all families.</li> <li>7. One parent education workshop offered per year by center or other agency.</li> </ol>

The following footnotes reference program criteria and staff qualifications in Section 5119:  
Staff Qualifications

<sup>1</sup>The following may be substituted to meet this requirement of three semester hour credits in the care of young children or child development: a CDA or have approved high school child development courses or have five years full-time experience in an early childhood program or have completed a Child Care Assistant Teacher 1 LA Pathways Classroom Certificate. The following may be used to meet the requirement of up to six semester hour credits in the care of young children or child development: CDA or have completed a Child Care Assistant Teacher 2 LA Pathways Classroom Certificate. An individual may use the above substitutions to meet the requirements for a maximum of six semester hour credits.

<sup>2</sup>The following may be substituted to meet the requirement for three semester hour credits in administration: LA Pathways Administrator Certificate or National Administrator Credential (NAC) or three years experience in administration or a combination of one year in administration experience and four years in teaching young children in an early childhood program.

NOTE: For Director Qualification: Experience in teaching young children or administration may only be substituted one time. At the next QRS review, the necessary educational requirement (credits in the care of young children or child development or credits in administration) must be met.

<sup>3</sup>For the purpose of this document, the designated social-emotional subscale of the ERS is defined as consisting of the following subscales: ITERS-R—Listening and Talking, Interaction and Program Structure; ECERS-R—Language—Reasoning, Interaction and Program Structure.

\* Staff benefits options: employee health insurance or comparable health benefits; paid annual leave; paid sick leave; paid holiday; child care benefit/discount; bonus based on merit/achievement or education; retirement compensation; annual increments based on merit; tuition reimbursement and other related educational expenses such as books, travel, fees, substitutes; differential shift pay, flextime, paid professional association fee.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Part 98 and R.S.36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 33:

### **§5121. Participation**

A. A child care center will complete the application for participation in the Quality Rating System. A quality rating verification visit will be conducted by the department and one or more stars may be awarded.

B. Quality ratings will be valid for one year from the date of the star rating award. Ratings will have to be earned annually through the quality rating verification process.

C. Centers with one-star award may apply for a quality rating verification after receiving their one-star award. Centers with more than one-star may apply for a quality rating review six months after the date of their current rating award.

D. Centers that have achieved a Star Rating will have their rating revoked if the child care license is revoked or if the child care center is referred to the designated licensing committee with a recommendation from the department for revocation.

E. Centers that have achieved a star rating may have their rating reviewed and modified if, at any time, it becomes known to the department or the department receives information or has actual knowledge that the child care center no longer meets standards for the center's current star rating award.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Part 98 and R.S.36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 33:

### **§5123. Quality Rating System Awards**

A. Bonus payments will be issued after the end of each calendar quarter to Class A child care centers that care for children receiving assistance from the Child Care Assistance Program and for children in the state's Foster Care Program in accordance with the star rating for the service(s) period for that quarter. The payment is equal to a percentage, as defined below, of all child care subsidy payments received from the department by the Class A center for services provided during the service period(s) based for that quarter on the center's rating(s):

1. one star—0 percent;
2. two star—3 percent;
3. three star—8 percent;
4. four star—13.5 percent;
5. five star—20 percent.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Part 98 and R.S.36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 33:

Ann S. Williamson  
Secretary

0711#080

## **DECLARATION OF EMERGENCY**

### **Department of Social Services Office of Family Support**

TANF—General Educational Development  
(GED) Testing Program (LAC 67:III.5595)

The Department of Social Services, Office of Family Support, has exercised the emergency provision of R.S. 49:953(B), the Administrative Procedure Act, to adopt LAC 67:III, Subpart 15, General Educational Development (GED) Testing Program as a new TANF Initiative. This Emergency Rule, effective October 17, 2007, will remain in effect for a period of 120 days.

Pursuant to Act 18 of the 2007 Regular Session of the Louisiana Legislature, the agency is adopting the GED Testing Program to support and enhance the educational and job readiness skills of identified students at risk of dropping out or engaging in negative behaviors that can lead to dependency, out-of-wedlock pregnancies, imprisonment, etc. In addition the program encourages building stable families by promoting GED attainment, leading to improved opportunities for employment. The program provides GED adult literacy services to prepare students for passage of the GED Test. Students' increased literacy levels may lead to the attainment of a Louisiana High School Equivalency Diploma upon passage of the GED, and possible entry into postsecondary education or employment opportunities including vocational skill trainings.

The authorization for emergency action in this matter is contained in Act 18 of the 2007 Regular Session of the Louisiana Legislature.

**Title 67  
SOCIAL SERVICES**

**Part III. Family Support**

**Subpart 15. Temporary Assistance to Needy Families  
(TANF) Initiatives**

**Chapter 55. TANF Initiatives**

**§5595. GED Testing Program**

A. Effective October 17, 2007, the Office of Family Support shall enter into a Memorandum of Understanding with the Department of Education for the General Educational Development (GED) Testing Program.

B. The services provided consist of GED adult literacy services which prepare students for passage of the GED Test. The GED adult literacy services will address all levels of entering students such as Adult Basic Education (ABE) which will be directed toward students with literacy skills in the range of grades 0-6; Pre-GED directed toward students with literacy skills in the range of grades 7-8; and Adult Secondary Education (ASE) directed toward students with literacy skills in the range of grades 9-12.

C. These services will be provided to 16-21 year olds. These services meet TANF goal 3, to prevent and reduce the incidence of out-of-wedlock pregnancies. TANF goal 3 will be met by supporting and enhancing the educational and job readiness skills of youth at risk of dropping out of school and those who have already dropped out of school and are at risk of engaging in negative behaviors that can lead to out-of-wedlock pregnancies. These services will also be provided to custodial and non-custodial parents who are 22 years old and older with a minor child. These services meet TANF goal 4, to encourage the formation and maintenance of a two parent families. TANF goal 4 will be met by building stable families by promoting GED attainment which will lead to improved opportunities for employment.

D. Eligibility for services is not limited to needy families.

E. Services are considered non-assistance in that they are not considered to meet an on-going need.

AUTHORITY NOTE: Promulgated in accordance with 42 USC 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 18, 2007 Reg. Session

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 33:

Ann Silverberg Williamson  
Secretary

0711#002

**DECLARATION OF EMERGENCY**

**Department of Wildlife and Fisheries  
Wildlife and Fisheries Commission**

**Commercial King Mackerel Fishery Closure**

In accordance with the emergency provisions of R.S. 49:953(B), the Administrative Procedure Act, R.S. 49:967 which allows the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission to use emergency procedures to set finfish seasons, R.S. 56:326.3 which

provides that the Wildlife and Fisheries Commission may set seasons for saltwater finfish, and the authority given to the secretary of the department, by the commission in its resolution of January 4, 2007, to close the 2007 commercial king mackerel season in Louisiana state waters when he is informed that the designated portion of the commercial king mackerel quota for the Gulf of Mexico has been filled, or was projected to be filled, the secretary hereby declares:

Effective 12:00 noon, November 7, 2007, the commercial fishery for king mackerel in Louisiana waters will close and remain closed through June 30, 2008. Nothing herein shall preclude the legal harvest of king mackerel by legally licensed recreational fishermen. Effective with this closure, no person shall commercially harvest, possess, purchase, barter, trade, sell or attempt to purchase, barter, trade or sell king mackerel within or without Louisiana waters. Effective with closure, no person shall possess king mackerel in excess of a daily bag limit within or without Louisiana waters. The prohibition on sale/purchase of king mackerel during the closure does not apply to king mackerel that were legally harvested, landed ashore, and sold prior to the effective date of the closure and were held in cold storage by a dealer or processor provided appropriate records in accordance with R.S. 56:306.5 and 56:306.6 are properly maintained.

The secretary has been notified by National Marine Fisheries Service that the commercial king mackerel season in federal waters of the Gulf of Mexico will close at 12:00 noon November 3, 2007. Closing the season in state waters is necessary to provide effective rules and efficient enforcement for the fishery, to prevent overfishing of this species in the long term.

Bryant O. Hammett Jr.  
Secretary

0711#047

**DECLARATION OF EMERGENCY**

**Department of Wildlife and Fisheries  
Wildlife and Fisheries Commission**

**Lake Mechant Oyster Season Closure**

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B) and R.S. 49:967(D), and under the authority of R.S. 56:433(B)1 which provides that the Wildlife and Fisheries Commission may designate what parts or portions of the natural reefs may be fished for oysters and it may suspend the fishing of oysters altogether from natural reefs not leased by it when such reefs are threatened with depletion as determined by the department, and a resolution adopted by the Wildlife and Fisheries Commission on August 2, 2007 which authorized the Secretary of the Department of Wildlife and Fisheries to take emergency action if necessary to close areas where significant spat catch has occurred with good probability of survival, if excessive amounts of non-living reef material are found in seed oyster loads, or if oyster resources and/or reefs are being adversely impacted, the secretary hereby declares an early closure to the oyster season that was originally scheduled to occur from October 24, 2007 and October 31, 2007.

The 2007/2008 oyster season in the Lake Mechant Public Oyster Seed Ground, as described in Louisiana Administrative Code (LAC) 76:VII.517, will close on Monday, October 29, 2007 at one-half hour after sunset. Heavy harvest pressure has occurred during the first two days of the 2007/2008 Lake Mechant oyster season. It has also been determined by department biologists that excessive amounts of non-living reef material are being harvested with seed oyster loads. Heavy harvest pressure and the removal of large quantities of non-living reef material may threaten the long-term sustainability of the oyster reefs of Lake Mechant

if allowed to continue. In addition, biological sampling has shown the occurrence of a recent successful spat set. These young oysters represent future oyster stocks and protecting spat is in the best interest of the public oyster seed ground oyster reefs.

Bryant O. Hammett, Jr.  
Secretary

0711#020

# Rules

## RULE

### Department of Agriculture and Forestry Office of the Commissioner

#### Fluoroquinolones in Seafood (LAC 7:XXXV.511)

The Commissioner of Agriculture and Forestry has adopted the following Rule governing the testing and sale of seafood in Louisiana. This Rule is being adopted in accordance with R.S. 3:2A, 3:3B, and R.S. 3:4608 of the Administrative Procedure Act.

The commissioner is promulgating these rules and regulations to implement standards relating to Fluoroquinolones in seafood that are consistent with standards adopted by the United States Food and Drug Administration, (FDA), regarding Fluoroquinolones in foods. All seafood sold in Louisiana must meet the standards set out in these regulations prior to distribution and sale of seafood in Louisiana. China is a geographic area where Fluoroquinolones is being used on or found in food producing animals or in products from such animals because Mississippi and Alabama have found Fluoroquinolones in fish from China. Additionally, testing by the department has resulted in positive testing of fish from China for the presence of Fluoroquinolones.

Fluoroquinolones are broad-spectrum antibiotics that have been restricted by the FDA for extra-label use. The FDA banned the extra label use of Fluoroquinolones in food producing animals in 1997 after determining that such use presented a risk to the public health. That ban is still in effect, see (21 CFR 530.41). "Extra-label use" means "actual use or intended use of a drug in an animal in a manner that is not in accordance with the approved labeling," see 21 CFR 530.3(a).

Since, the FDA has not established a safe level, tolerance level or safe concentration for Fluoroquinolones there is a zero tolerance level for Fluoroquinolones. Therefore, foods in which Fluoroquinolones are found are adulterated foods under the United States and Louisiana Food, Drug, and Cosmetics Acts.

Fluoroquinolones have been known to cause hypersensitivity or allergic reactions, toxicity-related reactions, and to an increased prevalence of infections due to antibiotic-resistant microorganisms. Hypersensitivity reactions can include life-threatening anaphylaxis, as well as urticaria, dermatitis, vomiting, and diarrhea. There is a significant chance that these reactions may be attributed to other factors, thereby causing a misdiagnosis, and subsequent mistreatment of a person's medical condition.

Toxicity can affect multiple organ systems and include peripheral neuropathies, seizures, phototoxicity, tendon rupture, fatal drug interactions and arthropathies in children. Fluoroquinolones should not be taken by pregnant and lactating women due to concern over the potential effect on a developing fetus.

This Rule is enabled by R.S. 3:2A, R.S. 3:3B, and R.S. 3:4608.

## Title 7

### AGRICULTURE AND ANIMALS

#### Part XXXV. Agro-Consumer Services

#### Chapter 5. Consumer Products—Testing and Labeling

##### Subchapter B. Fluoroquinolones

#### §511. Fluoroquinolones in Seafood Prohibited; Testing and Sale of

A. - K. ...

L. The commissioner declares that he has information that would lead a reasonable person to believe that Fluoroquinolones is being used on or found in food producing animals or in products from such animals, in the following geographic area(s).

1. The geographic area or areas are:

- a. the country of Vietnam;
- b. the country of China.

2. All seafood harvested from or produced, processed or packed in any of the above listed geographic areas is hereby declared to be subject to all the provisions of this Section, including sampling and testing provisions.

M. - N. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2, 3:3, and 3:4608.

HISTORICAL NOTE: Promulgated by the Louisiana Department of Agriculture and Forestry, Office of Agro-Consumer Services, Weights and Measures Division, LR 33:38 (January 2007), amended LR 33:2348 (November 2007).

Bob Odom  
Commissioner

0711#040

## RULE

### Board of Elementary and Secondary Education

#### Bulletin 111—The Louisiana School, District, and State Accountability System—Criteria and Performance (LAC 28:LXXXIII.301, 1101, and 1403-1407)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 111—The Louisiana School, District, and State Accountability System* (LAC Part Number LXXXIII). The changes in §301 expand the criteria for schools considered at risk of failing to be furnished with accountability data during the preliminary release. The changes in §1101 simplify the criterion for schools with school performance scores of 120 or greater being exempt from Academic Assistance (AA) status. The changes for §1403 simplify the criterion for schools to enter AA and describe circumstances under which and procedures by which districts may request waivers of AA status to the

Louisiana Department of Education. The changes for §§ 1405 and 1407 update the criterion by which schools enter and exit AA and reduce the number of higher-performing schools identified for AA with the expected outcome being that LEAs will focus more resources on their schools that are not adequately growing toward the 2014 goal of a School Performance Score of 120. There are no estimated implementation costs (savings) to state or local governmental units as a result of these changes.

**Title 28  
EDUCATION**

**Part XXXIII. Bulletin 111—The Louisiana School,  
District, and State Accountability System**

**Chapter 3. School Performance Score Component**

**§301. School Performance Score Goal**

A. - E.1.c. ...

2. In 2007, the preliminary accountability results shall include those schools identified as:

- a. failing the SPS component based on the 2007 Baseline SPS; or
- b. failing the SPS component based on the 2006 Baseline SPS; or
- c. being in school improvement (any level) in academic year 2006-07; or
- d. failing the subgroup component based on spring 2006 test results.

F. - L. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2737 (December 2003), amended LR 31:1512 (July 2005), LR 32:1017 (June 2006), LR 32:2034, 2035 (November 2006), LR 33:424 (March 2007), LR 33:2349 (November 2007).

**Chapter 11. Performance Labels**

**§1101. Performance Labels**

A. ...

B. When a school's performance label is greater than or equal to four stars (SPS  $\geq$  120.0), it shall not receive a "negative" growth label (minimal academic growth, no growth, school in decline).

C.1. In 2005, 3 star schools will not receive negative growth labels.

2. In 2006 and 2007, 3 star schools with SPSs greater than or equal to 105.0 will not receive negative growth labels.

3. In 2008 and 2009, 3 star schools with SPSs greater than or equal to 110.0 will not receive negative growth labels.

4. In 2010 and 2011, 3 star schools with SPSs greater than or equal to 115.0 will not receive negative growth labels.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2744 (December 2003), amended LR 31:2764 (November 2005), LR 33:2349 (November 2007).

**Chapter 14. Academic Assistance (formerly School Improvement 1)**

**§1403. Entry into Academic Assistance**

A. Beginning in 2007, schools with growth targets greater than 7.0 points shall enter academic assistance level 1 (AA1). In 2010, this value decreases to 6.0 points, and in 2013, to 5.0 points.

B. Districts may submit requests to the State Superintendent of Education for waivers from AA status, if either of the following applies.

1. The total number of academically unacceptable (AUS) schools, schools in school improvement, and schools in academic assistance exceeds 30 percent of the non-alternative schools in the district.

a. Waiver requests based on the 30 percent limit must be for individual schools and can only serve as a means to establish a reasonable number of schools on which to focus resources.

2. The school or schools for which a district is requesting waivers implemented reforms or innovations that should show substantially improved student achievement the following year.

a. Any waiver request based on Paragraph 2 must be accompanied by documentation that shows implementation of the reforms/innovations in the previous year. The documentation must include classroom observations. The Degree of Implementation Guide may serve this purpose.

b. A school cannot receive a waiver for two consecutive years based on Paragraph 2.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1513 (July 2005), amended LR 33:2349 (November 2007).

**§1405. Movement in and Exit from Academic Assistance**

A. Schools move one level higher in academic assistance when their newly calculated growth target exceeds 8.0 SPS points (a school in AA2 moves to AA3).

B. Schools remain at the same level of academic assistance when they do not advance or exit academic assistance.

C. Schools exit academic assistance when their growth targets are 5.0 or fewer points.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1513 (July 2005), amended LR 33:2349 (November 2007).

**§1407. Exit from Academic Assistance**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1513 (July 2005), repealed LR 33:2349 (November 2007).

Weegie Peabody  
Executive Director

0711#005

**RULE**

**Board of Elementary and Secondary Education**

Bulletin 118—Statewide Assessment Standards and Practices (LAC 28:CXI.2007)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended Bulletin 118—*Statewide Assessment Standards and Practices*, §2007, Performance Standards. Bulletin 118 contains the State Board of Elementary and Secondary Education (SBESE) and the Division of Standards, Assessments, and Accountability (DSAA) test policy rules, guidelines, and procedures for easy access during statewide test administration. The purpose of this project is to provide information regarding Chapter 20, LEAP Alternate Assessment (LAA 2), Subchapter C, Achievement Levels and Performance Standards, §2007.D, regarding the addition of Achievement Level Scaled Score Ranges for grades 5, 6, 7, and 9. The revisions will

consolidate statewide test information and provide easy access to that information. It was necessary to revise the bulletin at this time to incorporate guidelines for newly developed statewide assessments used in testing and add new language to established assessment guidelines.

**Title 28**

**EDUCATION**

**Part CXI. Bulletin 118—Statewide Assessment Standards and Practices**

**Chapter 20. LEAP Alternate Assessment, Level 2 Subchapter C. Achievement Levels and Performance Standards**

**§2007. Performance Standards**

A. - C. ...

D. The top end of the Basic achievement level was truncated at a scale score of 340 in all cases because the LAA 2 assessment was not designed to accurately assess students who may be emerging into the Mastery achievement level.

**LAA 2 Achievement Levels and Scaled Score Ranges**

Achievement Level	English Language Arts Scaled Score Range	Mathematics Scaled Score Range	Science Scaled Score Range	Social Studies Scaled Score Range
Grade 4				
Basic	301–340	315–340		
Approaching Basic	263–300	282–314		
Foundational	227–262	248–281		
Pre-Foundational	100–226	100–247		

Achievement Level	English Language Arts Scaled Score Range	Mathematics Scaled Score Range	Science Scaled Score Range	Social Studies Scaled Score Range
Grade 5				
Basic	286–340	282–340		
Approaching Basic	247–285	250–281		
Foundational	213–246	215–249		
Pre-Foundational	100–212	100–214		

Achievement Level	English Language Arts Scaled Score Range	Mathematics Scaled Score Range	Science Scaled Score Range	Social Studies Scaled Score Range
Grade 6				
Basic	280–340	281–340		
Approaching Basic	239–279	248–280		
Foundational	177–238	201–247		
Pre-Foundational	100–176	100–200		

Achievement Level	English Language Arts Scaled Score Range	Mathematics Scaled Score Range	Science Scaled Score Range	Social Studies Scaled Score Range
Grade 7				
Basic	286–340	292–340		
Approaching Basic	236–285	255–291		
Foundational	185–235	220–254		
Pre-Foundational	100–184	100–219		

Achievement Level	English Language Arts Scaled Score Range	Mathematics Scaled Score Range	Science Scaled Score Range	Social Studies Scaled Score Range
Grade 8				
Basic	315–340	321–340		
Approaching Basic	269–314	296–320		
Foundational	223–268	263–295		
Pre-Foundational	100–222	100–262		

Achievement Level	English Language Arts Scaled Score Range	Mathematics Scaled Score Range	Science Scaled Score Range	Social Studies Scaled Score Range
Grade 9				
Basic	291-340	293-340		
Approaching Basic	219-290	263-292		
Foundational	121-218	221-262		
Pre-Foundational	100-120	100-220		

Achievement Level	English Language Arts Scaled Score Range	Mathematics Scaled Score Range	Science Scaled Score Range	Social Studies Scaled Score Range
Grade 10		Grade 11		
Basic	299–340	305–340	301–340	297–340
Approaching Basic	270–298	286–304	267–300	275–296
Foundational	221–269	241–285	214–266	241–274
Pre-Foundational	100–220	100–240	100–213	100–240

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.4 (A).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, Office of Student and School Performance, LR 33:270 (February 2007), amended LR 33:2350 (November 2007).

Weegie Peabody  
Executive Director

0711#006

### RULE

#### Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School Administrators (LAC 28: CXV.1103, 2323, and 2324)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 741—Louisiana Handbook for School Administrators*, §1103. Compulsory Attendance, §2323, Proficiency Examinations, and §2324, Credit Recovery. The revision to §1103 allows schools to provide instruction outside regular class time so that students who are failing due to excessive absences to make up the instructional time they missed. The revision to §2323 allows students who have failed a course to take a proficiency exam for that course. Current policy does not allow students who have taken a course to take a proficiency exam. The addition of §2324 allows districts to implement credit recovery programs for students who have failed a course.

These two revisions are the result of a recommendation from the High School Redesign Commission that policy changes be considered to help students who are failing or

who are in danger of failing to recover credit. The revision to §1103 assists students who are in danger of failing due to excessive absences. The revision to §2323 and the addition of §2324 provide ways for students to recover credit after they have failed a class.

### Title 28 EDUCATION

#### Part CXV. Bulletin 741—Louisiana Handbook for School Administrators

#### Chapter 11. Student Services

#### §1103. Compulsory Attendance

A. - F. ...

G. In order to be eligible to receive grades, high school students shall be in attendance a minimum of 81 days, or the equivalent, per semester or 162 days a school year for schools not operating on a semester basis. Elementary students shall be in attendance a minimum of 160 days a school year.

1. Students in danger of failing due to excessive absences may be allowed to make up missed time in class sessions held outside the regular class time. The make-up sessions must be completed before the end of the current semester and all other policies must be met.

H. - M. Note. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:221; R.S. 17:226; R.S. 17:233.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1273 (June 2005), amended LR 32:546 (April 2006), LR 32:1030 (June 2006), LR 33:2351 (November 2007).

#### Chapter 23. Curriculum and Instruction

#### §2323. Proficiency Examinations

A. High school credit shall be granted to a student following the student's passing of a proficiency examination for the eligible course.

B. A proficiency examination shall be made available to a student when a school official believes that a student has mastered eligible subject matter and has reached the same or a higher degree of proficiency as that of a student who successfully completed an equivalent course at the regular high school or college level.

1. The testing instrument and the passing score shall be submitted for approval to the Division of Student Standards and Assessments of the DOE.

2. The course title, year taken, P/F (Pass or Fail) and unit of credit earned shall be entered on the Certificate of High School Credits (transcript). MPS (Minimum Proficiency Standards) must be indicated in the remarks column.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7, R.S. 17:24.4, and R.S. 17:391.3.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1294 (June 2005), amended LR 33:2351 (November 2007).

### **§2324. Credit Recovery**

A. Credit recovery refers to instructional programs for students who have failed courses taken previously.

B. LEAs may develop credit recovery programs which are self-paced and competency-based.

1. Students earning Carnegie credit in a credit recovery course must have previously taken and failed the course.

2. Students shall not be required to meet attendance requirements in §1103.G for credit recovery courses, provided students have met attendance requirements when they took the course previously or the students' combined attendance during the previous course and the credit recovery course meet the attendance requirements. Schools shall not be required to meet the instructional time requirements in §907.A for credit recovery courses.

3. Credit recovery courses must be aligned with the state's content standards and grade-level expectations.

4. Credit recovery courses taught in a classroom setting using computer software programs designed for credit recovery must be facilitated by a certified teacher.

a. Additional instruction to cover standards and grade-level expectations not included in the software programs shall be provided by a teacher properly certified in the content area.

5. One of the following criteria must be met for a student to earn Carnegie credit in a credit recovery course.

a. The student must successfully complete the course requirements for a computer-based credit recovery program approved by the DOE.

b. The student must pass a comprehensive final exam approved by the DOE. The exam could be an end-of-course exam developed by the DOE or a locally-developed comprehensive final exam. The locally-developed final exam and the passing score shall be submitted for approval to the Division of Student Standards, Assessments, and Accountability of the DOE.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:2352 (November 2007).

Weegie Peabody  
Executive Director

0711#007

## **RULE**

### **Board of Elementary and Secondary Education**

Bulletin 741—Louisiana Handbook for School Administrators—Policy Revisions (LAC 28:CXV.503, 505, 1107, 1109, 2305, 2313, 2319, and 2355)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 741—Louisiana Handbook for School Administrators*.

The revision to §503 adds business manager to the list of certified personnel a district is required to hire. This addition was required by a new state statute.

The revision to §1107 indicates the procedure used for students who register without presenting a Social Security card.

Paragraphs A and B of §1109 were deleted because the state statute on which they were based was repealed. These paragraphs dealt with the assignment and transfer of students.

Section 2305 requires schools to have an educational program commemorating Constitution Day. This addition to policy is based on federal law.

The revision to §2313 adjusts the recommended instructional schedule for prekindergarten.

The revisions to §505, §2355, and §2319 correct minor errors in the policies.

## **Title 28**

### **EDUCATION**

#### **Part CXV. Bulletin 741—Louisiana Handbook for School Administrators**

#### **Chapter 5. Personnel**

#### **§503. Staff Organization**

A. The professional staff of the local LEA's central office shall be organized with assigned roles, responsibilities and authority to provide a structure for implementing local school policies.

B. Each LEA shall be required to employ certified personnel as required by state/federal law:

1. superintendent;
2. special education supervisor;
3. Title IX coordinator;
4. child welfare and attendance supervisor;
5. school nurse;
6. school food services supervisor;
7. business manager.

NOTE: See Bulletin 1929: Louisiana Accounting and Uniform Governmental Handbook, §1301.

C. The LEA shall assign principals to schools as appropriate.

D. For LEAs in any parish having a population of at least 475,000 persons, a full-time social worker shall be employed in each school which has been identified as a failing school.

E. There shall be alcohol, drug, and substance abuse counselors who regularly visit every secondary school and elementary school at a maximum ratio of four schools to one counselor, for the purpose of counseling students who have been identified as having an alcohol, drug, or substance abuse problem.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:15, R.S. 17:28, R.S. 17:29, R.S. 17:54, R.S. 17:81, R.S. 17:84.2, R.S. 17:228, R.S. 17:403, R.S. 17:1947(F); Title 34, Sect. 1068; Fed. Reg. 7CFR 210.3(a).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1265 (June 2005), amended LR 33:2352 (November 2007).

### **§505. Certification of Personnel**

A. To be eligible legally for teaching, administrative, supervisory, or other professional services in the public schools of Louisiana, personnel shall hold a valid Louisiana certificate appropriate to the services rendered or shall receive annual approval in accordance with provisions allowed by BESE.

NOTE: Refer to Bulletin 746—Louisiana Standards for State Certification of School Personnel.

B. - I. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:7.1; R.S. 17:24.10; R.S. 17:81; R.S. 17:491; 17:497.2; R.S. 17:1974.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1265 (June 2005), amended LR 33:2353 (November 2007).

## **Chapter 11. Student Services**

### **§1107. Entrance Requirements**

A.1. All students, upon entering Louisiana schools for the first time, shall present:

a. an official birth certificate (Children born in Louisiana will be given a 15 day grace period to secure a copy of their birth record. Children born out of this state will be given 30 days' grace in which to produce a copy of their birth record);

b. a record of immunization; and

c. an official Social Security card. If no Social Security is available, the student shall be assigned a state identification number.

2. In cases where birth certificates and/or birth verification forms cannot be obtained, the school principal may accept whatever positive proof of age, race, and parentage is available. It shall be left to the discretion of the parish or city superintendent of schools, subject to the authority of the school board, as to whether or not a child shall continue in school upon failure to comply herewith.

B. - B.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:151.3; 17:170; 17:222.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1274 (June 2005), amended LR 33:2353 (November 2007).

### **§1109. Assignment and Transfer of Students**

A. LEAs may, by mutual agreement, provide for the admission to any school of students residing in adjoining parishes and for transfer of school funds or other payments by one board to another for, or on account of, such attendance.

B. If not specifically contrary to the provisions of an order of a court of competent jurisdiction providing for the assignment of students within the LEA, a city or parish school board shall assign a student to attend any public school requested by a parent or other person responsible for the student's school attendance when the requested school has space available and is of a suitable grade level, and the child resides not more than one mile from such school measured by the distance to be traveled on public streets or highways, or by the boundary of a subdivision. Exceptions are as follows.

1. This provision does not apply in Orleans Parish.

2. If not specifically contrary to the provisions of an order of a court of competent jurisdiction providing for the assignment of students within the LEA, a city or parish school board in any parish having a population of at least 140,000 but not more than 160,000 persons and the Caddo Parish School Board, shall assign a student to attend any public high school requested by a parent or other person responsible for the student's school attendance when the requested school has space available and is of a suitable grade level, and the student resides not more than 2 miles from such school. A school board shall not be required to provide transportation to any student enrolled in high school pursuant to the provisions of this Paragraph.

NOTE: Refer to §303.D.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:105; R.S. 17:221.2.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1274 (June 2005), amended LR 33:2353 (November 2007).

## **Chapter 23. Curriculum and Instruction**

### **§2305. Ancillary Areas of Instruction**

A. - F.3. ...

G. Each school shall hold an educational program pertaining to the United States Constitution on Constitution Day, September 17, of each year. The purpose of the program is to commemorate the September 17, 1787 signing of the Constitution. When September 17 falls on a Saturday, Sunday, or holiday, the Constitution Day program shall be held during the preceding or following week.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:154; R.S. 17:261 et seq.; R.S. 17:281 et seq.; R.S. 17:405 et seq.; 36 USCS §106.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1288 (June 2005), amended LR 33:2353 (November 2007).

### **§2313. Elementary Program of Studies**

A. ...

B. Schools and LEAs providing prekindergarten programs shall offer a curriculum that is developmentally appropriate and informal in nature.

NOTE: Refer to *Bulletin 105—Louisiana Standards for Serving Four-Year-Old Children*.

1. The following suggested minimum time requirements for prekindergarten shall be flexibly scheduled to meet the developmental needs of young students. Because transition times are teacher-directed, they shall be included as teacher-directed activities.

Teacher directed activities (whole and small group)	25%-35%
Student-initiated activities (learning center)	35%-45%
Lunch	
Snack and restroom time	10%
Rest period	20%

B.2 - F.7.a ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:17.1; R.S. 17: 24.8; R.S. 17:154-154.1; R.S. 17:261 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1289 (June 2005), amended LR 33:2353 (November 2007).

### §2319. High School Graduation Requirements

A. - E. ...

F. High School Area of Concentration

1. All high schools shall provide students the opportunity to complete an area of concentration with an academic focus and/or a career focus.

a. To complete an academic area of concentration, students shall meet the current course requirements for the Tuition Opportunity Program for Students (TOPS) Opportunity Award plus one additional Carnegie unit in mathematics, science, or social studies.

b. To complete a career Area of Concentration, students shall meet the minimum requirements for graduation including four elective primary credits in the Area of Concentration and two related elective credits, including one computer/technology course. Areas of Concentration are identified in the Career Options Reporting System with each LEA designating the Career and Technical Education Areas of Concentration offered in their school system each year. The following computer/technology courses can be used to meet this requirement.

Course	Credit
Computer/Technology Literacy	1
Computer Applications or Business Computer Applications	1
Computer Architecture	1
Computer Science I, II	1 each
Computer Systems and Networking I, II	1 each
Desktop Publishing	1
Digital Graphics & Animation	1/2
Multimedia Presentations	1/2 or 1
Web Mastering or Web Design	1/2
Independent Study in Technology Applications	1
Word Processing	1
Telecommunications	1/2
Introduction to Business Computer Applications	1
Technology Education Computer Applications	1
Advanced Technical Drafting	1
Computer Electronics I, II	1 each
Database Programming with PL/SQL	1
Java Programming	1
Database Design and Programming	1/2
Digital Media I/II	1 each

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:24.4; R.S. 17:183.2; R.S. 17:395.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:240 (February 2006), amended LR 33:2354 (November 2007).

### §2355. Music

A. The music course offerings shall be as follows.

Course Title(s)	Units
Applied Music	1
Beginning Band	1
Beginning Choir	1
Sectional Rehearsal	1
Studio Piano I, II, III	1 each
Studio Strings I, II, III	1 each
Advanced Band	1
Advanced Choir	1
Advanced Orchestra	1
Small Vocal Ensemble	1
Wind Ensemble	1
Jazz Ensemble	1
Talented Music I, II, III, IV	1 each

B. Advanced Choir, Advanced Band, Advanced Orchestra, Small Vocal Ensemble, Wind Ensemble, Applied Music, Jazz Ensemble, and Studio Piano III are performance classes with new literature each year; they may be repeated more than once.

C. Approval by DOE is required before private piano and studio strings instruction can be given for credit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1296 (June 2005), amended LR 31:3069 (December 2005), LR 33:2354 (November 2007).

Weegie Peabody  
Executive Director

0711#008

### RULE

#### Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for State Certification of School Personnel—Out-of-Field Authorization to Teach (LAC 28:CXXXI.325)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 746—Louisiana Standards for State Certification of School Personnel*, §325, Out-of-Field Authorization to Teach (OFAT). This change in policy will allow an individual to renew an Out-of-Field Authority to Teach (OFAT) by attempting the required PRAXIS exam(s) for add-on certification in the area of the OFAT at least once per year. The current policy requires that an individual would, for renewal of an OFAT certificate, have to complete all PRAXIS exam(s) required for add-on certification twice per year. The results would be that an individual may have to attempt three exams per year instead of six exams per year.

**Title 28  
EDUCATION**

**RULE**

**Part CXXXI. Bulletin 746—Louisiana Standards for State Certification of School Personnel**

**Board of Elementary and Secondary Education**

**Chapter 3. Teaching Authorizations and Certifications**

Bulletin 746—Louisiana Standards for State Certification of School Personnel—PRAXIS I Scores (LAC 28:CXXXI.241)

**Subchapter B. Nonstandard Teaching Authorizations**

**§325. Out-of-Field Authorization to Teach (OFAT)**

A. - B. ...

C. Renewal Requirements: Teacher must successfully complete one of the following:

1. six semester hours per year in the area(s) that he/she is teaching;

2. the Praxis exam(s) required for certification in the area(s) that he/she is teaching. Under this stipulation, the exam(s) must be attempted at least once per year.

NOTE: The coursework and Praxis exam(s) required for certification will be per official evaluation provided by the Division of Teacher Certification and Higher Education.

D. - D.3.b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1804 (October 2006), amended LR 33:2355 (November 2007).

Weegie Peabody  
Executive Director

0711#009

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 746—Louisiana Standards for State Certification of School Personnel*: §241. PRAXIS I SCORES. This policy specifies Principles of Learning and Teaching (PLT): Early Childhood (0521) as the required PRAXIS exam for certification in PK-3 and Early Interventionist certification. In Fall 2007, Educational Testing Service (ETS) will discontinue the current Early Childhood Education exam (#0020) required for Louisiana licensure in Grades PK-3 and in Early Interventionist Birth to Five Years.

**Title 28  
EDUCATION**

**Part CXXXI. Bulletin 746—Louisiana Standards for State Certification of School Personnel**

**Chapter 2. Louisiana Teacher Preparation Programs  
Subchapter B. Alternate Teacher Preparation Programs**

**§241. PRAXIS I SCORES**

A. - A.3. ...

\* \* \*

**B. Content and Pedagogy Requirements**

Certification Area	Name of Praxis Test	Content Exam Score	Pedagogy: Principles of Learning & Teaching		
			PLT K-6 (#0522)	PLT 5-9 (#0523)	PLT 7-12 (#0524)
Early Childhood PK-3	Elementary Content Knowledge (0014) Prior to 5/31/04	147	Prior to 6/1/04: PLT K-6 or ECE 0020; After 5/31/04: Early Childhood Education 0020 (Score 510); After 12/31/07 Principles of Learning & Teaching 0521 (Score 172)		
	Effective 6/1/04	150			
Grades 1-5	Elementary Content Knowledge (0014) Prior to 5/31/04	147	161	---	---
	Effective 6/1/04	150			
Grades 4-8 Generic	Middle School: Content Knowledge (0146) Effective 6/1/04, this exam not available for certification purposes; middle grades candidates required to pass one or more content specific middle grades exams.	150	---	154	---
Grades 4-8 Mathematics	Middle School Mathematics (0069)	148	---	154	---
Grades 4-8 Science	Middle School Science (0439) Prior to 5/31/2006 Effective 6/1/2006 Effective 6/1/2009	140	---	154	---
		145			
		150			
Grades 4-8 Social Studies	Middle School Social Studies (0089)	149	---	154	---
Grades 4-8 English/Language Arts	Middle School English/Language Arts (0049)	160	---	154	---

C. - C.2. ...  
\* \* \*

D. Special Education Areas

Area	Content Exam	Score	Pedagogy Requirement	Score
All Special Education Area(s)			Prior to 6/1/04: PLT K-6 (161), PLT 5-9 (154) or PLT 7-12 (161)	
Early Interventionist	Elementary Education: Content Knowledge (0014) Effective 7/1/05	150	Educ. of Exceptional Students: Core Content Knowledge (0353) Effective 6/1/04 Educ. of Exceptional Students: Core Content Knowledge (0353) & Early Childhood Education (0020) Effective 7/1/05 Principles of Learning & Teaching: Early Childhood (0521) Effective 1/1/08	143 143 510 172
Hearing Impaired	Elementary Education: Content Knowledge (0014) Effective 7/1/05	150	Educ. of Exceptional Students: Core Content Knowledge (0353) & Educ. of Deaf and Hard of Hearing Students (0271) Effective 6/1/04	143 160
Mild to Moderate Disabilities	Effective 6/1/04 ALL Candidates must pass a content area exam appropriate to certification level 1-5, 4-8, 6-12 (e.g., 0014, or core subject-specific exams for middle or secondary grades) Prior to 6/1/04, a content area exam was required only for entry into a Mild/ Moderate 1-12 Practitioner Teacher Program, Non-Master's Certification-Only Alternate Program, and Master's Alternate Program.		*Educ. of Exceptional Students: Core Content Knowledge (0353) & Educ. of Exceptional Students: Mild/Moderate Disabilities (0542) Effective 6/1/04 *Note: (0353) and (0542) are not content area exams.	143 141
Significant Disabilities	Elementary Education: Content Knowledge (0014) Effective 7/1/05	150	Educ. of Exceptional Students: Core Content Knowledge (0353) & Educ. of Exceptional Students: Severe to Profound Disabilities (0544) Effective 6/1/04	143 147
Visual Impairments/Blind	Elementary Education: Content Knowledge (0014) Effective 7/1/05	150	Educ. of Exceptional Students: Core Content Knowledge (0353) Effective 6/1/04	143

E. ...  
\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1836 (October 2006), amended LR 33:2355 (November 2007).

Weegie Peabody  
Executive Director

0711#010

**RULE**

**Board of Elementary and Secondary Education**

**Bulletin 746—Louisiana Standards for State Certification of School Personnel—VTIE, CTTIE, and CTTIE-1 Certificates Renewal Guidelines (LAC 28:CXXXI.507)**

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 746—Louisiana Standards for State Certification of School Personnel*, §507. VTIE, CTTIE, and CTTIE-1 Certificates Renewal Guidelines. The change will allow individuals with a valid Louisiana teaching certificate to use three years of successful teaching experience in lieu of the mandatory three-hour New Instructor Workshop requirement and thus to renew with only three hours of CTTIE coursework. Current guidelines for renewal of a VTIE, CTTIE, or CTTIE 1 certificate require an individual who holds a bachelor's degree in education to complete a mandatory three-hour New Instructor Workshop plus three additional hours of CTTIE

coursework from an approved list of CTTIE coursework. This change will allow these individuals to use three years of successful teaching experience in lieu of the mandatory three-hour course.

**Title 28  
EDUCATION**

**Part CXXXI. Bulletin 746—Louisiana Standards for State Certification of School Personnel  
Chapter 5. Standards for Secondary Career and Technical Trade and Industrial Education Personnel**

**§507. VTIE, CTTIE, and CTTIE-1 Certificates Renewal Guidelines**

A. - A.3. ...

4. with a valid Louisiana teaching certificate (Type A, B, C, Level 1, 2, 3 or OS) and three years of successful teaching experience—three semester hours.

B. The coursework must be completed from the following approved list:

1. New Instructor Workshop (mandatory for all instructors who do not hold a valid Louisiana teaching certificate and do not have three years of successful teaching experience);

B.2. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1814 (October 2006), amended LR 33:2356 (November 2007).

Weegie Peabody  
Executive Director

0711#011

## RULE

### Student Financial Assistance Commission Office of Student Financial Assistance

Scholarship/Grant Programs—Eligibility  
(LAC 28:IV:505, 507 and 703)

The Louisiana Student Financial Assistance Commission (LASFAC) has amended and re-promulgated the rules of the Scholarship/Grant programs (R.S. 17:3021-3025, R.S. 3041.10-3041.15, and R.S. 17:3042.1.1-3042.8, R.S. 17:3048.1, R.S. 56:797.D(2)).(SG0785R)

#### Title 28

#### EDUCATION

#### Part IV. Student Financial Assistance—Higher Education Scholarship and Grant Programs

#### Chapter 5. Applications, Federal Grant Aid and ACT Test

#### §505. Application Deadlines for High School Graduates and Home Study Completers of 2004 and Later and Eligible Non-Graduates

A.1. - C.3.w. ...

x. A student, who enrolls for the first time as a full time student at an accredited out-of-state college and subsequently returns to Louisiana and enrolls as a full-time student in an eligible college or university for the fall semester of 2006, will be eligible for his TOPS award beginning with the fall semester of 2006 if his initial FAFSA or the on-line application is received no later than July 1, 2007.

C.4. - G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), repromulgated LR 24:635 (April 1998), amended LR 24:1901 (October 1998), repromulgated LR 27:1847 (November 2001), amended LR 30:2017 (September 2004), LR 31:37 (January 2005), LR 32:2238 (December 2006), LR 33:83 (January 2007), LR 33:2357 (November 2007).

#### §507. Final Deadline for Submitting Documentation of Eligibility

A. - B.1. ...

2. Beginning with the 2005-2006 academic year (college), all documentation and certifications necessary to establish student initial eligibility including, but not limited to, high school and/or college transcripts and certifications, copies of student aid reports, applicant confirmation forms, promissory notes, ACT and/or SAT scores, residency affidavits, proof of citizenship or permanent residency status and other documents that may be utilized in determining eligibility, must be received by LASFAC no later than July 1 immediately following the academic year (college) the

student is first eligible for payment of a TOPS award . For example, if a student's initial FAFSA is received no later than July 1, 2007, for that student to receive an award for the 2007-2008 academic year (college), LASFAC must have in its possession all documents relevant to establishing eligibility by July 1, 2008.

C.1. - D.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), repromulgated LR 24:635 (April 1998), amended LR 24:1901 (October 1998), repromulgated LR 27:1847 (November 2001), amended LR 28:447 (March 2002), LR 30:1161 (June 2004), LR 30:1471 (July 2004), LR 30:2019 (September 2004), LR 32:2238 (December 2006), LR 33:2357 (November 2007).

#### Chapter 7. Tuition Opportunity Program for Students (TOPS) Opportunity, Performance, and Honors Awards

#### §703. Establishing Eligibility

A. - A.5.a.i.(b). ...

(c) for students graduating in academic year (high school) 2004-2005 through 2005-2006, at the time of high school graduation, an applicant must have successfully completed 16.5 units of high school course work documented on the student's official transcript as approved by the Louisiana Department of Education constituting a core curriculum as follows.

Units	Course
1	English I
1	English II
1	English III
1	English IV
1	Algebra I (1 unit) or Applied Algebra IA and IB (2 units)
1	Algebra II
1	Geometry, Trigonometry*, Calculus or comparable Advanced Mathematics *Trigonometry cannot be used to fulfill this requirement for students graduating in Academic Year (High School) 2005-2006 and thereafter
1	Biology
1	Chemistry
1	Earth Science, Environmental Science, Physical Science, Biology II, Chemistry II, Physics, Physics II, or Physics for Technology
1	American History
1	World History, Western Civilization or World Geography
1	Civics and Free Enterprise (1 unit combined) or Civics (1 unit, nonpublic)
1	Fine Arts Survey; (or substitute 2 units performance courses in music, dance, or theater; or 2 units of studio art or visual art; or one elective from among the other subjects listed in this core curriculum)
2	Foreign Language, both units in the same language

Units	Course
1/2	Computer Science, Computer Literacy or Business Computer Applications (or substitute at least one-half unit of an elective course related to computers that is approved by the State Board of Elementary and Secondary Education (BESE); or substitute at least one-half unit of an elective from among the other subjects listed in this core curriculum); BESE has approved the following courses as computer related for purposes of satisfying the 1/2 unit computer science requirement for all schools (courses approved by BESE for individual schools are not included): Advanced Technical Drafting (1/2 or 1 credit) Business Computer Applications (1/2 or 1 credit) Computer Applications or Computer/Technology Applications (1/2 or 1 credit) Computer Architecture (1/2 or 1 credit) Computer Electronics I (1/2 or 1 credit) Computer Electronics II (1/2 or 1 credit) Computer/Technology Literacy (1/2 or 1 credit) Computer Science I (1/2 or 1 credit) Computer Science II (1/2 or 1 credit) Computer Systems and Networking I (1/2 or 1 credit) Computer Systems and Networking II (1/2 or 1 credit) Desktop Publishing (1/2 or 1 credit) Digital Graphics & Animation (1/2 credit) Introduction to Business Computer Applications (1/2 or 1 credit) Multimedia Productions or Multimedia Presentations (1/2 or 1 credit) Technology Education Computer Applications (1/2 or 1 credit) Telecommunications (1/2 credit) Web Mastering or Web Design (1/2 credit) Word Processing (1/2 or 1 credit) Independent Study in Technology Applications (1/2 or 1 credit)

(d). for students graduating in academic year (high school) 2006-2007, at the time of high school graduation, an applicant must have successfully completed 16.5 units of high school course work documented on the student's official transcript as approved by the Louisiana Department of Education constituting a core curriculum as follows.

Units	Course
1	English I
1	English II
1	English III
1	English IV
1	Algebra I (1 unit) or Applied Algebra 1A and 1B (2 units)
1	Algebra II
1	Geometry, Trigonometry*, Calculus or comparable Advanced Mathematics *Trigonometry cannot be used to fulfill this requirement for students graduating in Academic Year (High School) 2005-2006 and thereafter
1	Biology
1	Chemistry
1	Earth Science, Environmental Science, Physical Science, Biology II, Chemistry II, Physics, Physics II, or Physics for Technology
1	American History
1	World History, Western Civilization or World Geography
1	Civics and Free Enterprise (1 unit combined) or Civics (1 unit, nonpublic)
1	Fine Arts Survey; (or substitute 2 units performance courses in music, dance, or theater; or 2 units of studio art or visual art; or one elective from among the other subjects listed in this core curriculum)
2	Foreign Language, both units in the same language

Units	Course
1/2	Computer Science, Computer Literacy or Business Computer Applications (or substitute at least one-half unit of an elective course related to computers that is approved by the State Board of Elementary and Secondary Education (BESE); or substitute at least one-half unit of an elective from among the other subjects listed in this core curriculum); BESE has approved the following courses as computer related for purposes of satisfying the 1/2 unit computer science requirement for all schools (courses approved by BESE for individual schools are not included): Advanced Technical Drafting (1/2 or 1 credit) Business Computer Applications (1/2 or 1 credit) Computer Applications or Computer/Technology Applications (1/2 or 1 credit) Computer Architecture (1/2 or 1 credit) Computer Electronics I (1/2 or 1 credit) Computer Electronics II (1/2 or 1 credit) Computer/Technology Literacy (1/2 or 1 credit) Computer Science I (1/2 or 1 credit) Computer Science II (1/2 or 1 credit) Computer Systems and Networking I (1/2 or 1 credit) Computer Systems and Networking II (1/2 or 1 credit) Database Design and Programming (1/2 or 1 credit) Database Programming with PL/SQL (1/2 credit) Desktop Publishing (1/2 or 1 credit) Digital Graphics & Animation (1/2 credit) Digital Media I (1/2 or 1 credit) Digital Media II (1/2 or 1 credit) Introduction to Business Computer Applications (1/2 or 1 credit) Java Programming (1/2 or 1 credit) Multimedia Productions or Multimedia Presentations (1/2 or 1 credit) Technology Education Computer Applications (1/2 or 1 credit) Telecommunications (1/2 credit) Web Mastering or Web Design (1/2 credit) Word Processing (1/2 or 1 credit) Independent Study in Technology Applications (1/2 or 1 credit)

(e). beginning with the graduates of academic year (high school) 2007-2008, at the time of high school graduation, an applicant must have successfully completed 17.5 units of high school course work that constitutes a core curriculum and is documented on the student's official transcript as approved by the Louisiana Department of Education as follows.

Units	Course
1	English I
1	English II
1	English III
1	English IV
1	Algebra I (1 unit) or Applied Algebra 1A and 1B (2 units)
1	Algebra II
1	Geometry, Calculus or comparable Advanced Mathematics
1	Biology
1	Chemistry
1	Earth Science, Environmental Science, Physical Science, Biology II, Chemistry II, Physics, Physics II, or Physics for Technology or Agriscience I and II (both for 1 unit; provided however, that such Agriscience unit shall not be considered a science elective for the purpose of the math or science elective requirement below)
1	An elective from among the following math subjects: Geometry, Calculus, Pre-Calculus, Algebra III, Probability and Statistics, Discrete Mathematics, Applied Mathematics III, Advanced Mathematics I, Advanced Mathematics II, Integrated Mathematics III or the following science subjects: Biology II, Chemistry II, Physics or Physics II

Units	Course
1	American History
1	World History, Western Civilization or World Geography
1	Civics and Free Enterprise (1 unit combined) or Civics (1 unit, nonpublic)
1	Fine Arts Survey; (or substitute 2 units performance courses in music, dance, or theater; or 2 units of studio art or visual art; or 1 elective from among the other subjects listed in this core curriculum)
2	Foreign Language, both units in the same language
1/2	Computer Science, Computer Literacy or Business Computer Applications (or substitute at least one-half unit of an elective course related to computers that is approved by the State Board of Elementary and Secondary Education (BESE) or substitute at least one-half unit of an elective from among the other subjects listed in this core curriculum). BESE has approved the following courses as computer related for purposes of satisfying the 1/2 unit computer science requirement for all schools (courses approved by BESE for individual schools are not included): Advanced Technical Drafting (1/2 or 1 credit) Business Computer Applications (1/2 or 1 credit) Computer Applications or Computer/Technology Applications (1/2 or 1 credit) Computer Architecture (1/2 or 1 credit) Computer Electronics I (1/2 or 1 credit) Computer Electronics II (1/2 or 1 credit) Computer/Technology Literacy (1/2 or 1 credit) Computer Science I (1/2 or 1 credit) Computer Science II (1/2 or 1 credit) Computer Systems and Networking I (1/2 or 1 credit) Computer Systems and Networking II (1/2 or 1 credit) Database Design and Programming (1/2 or 1 credit) Database Programming with PL/SQL (1/2 credit) Desktop Publishing (1/2 or 1 credit) Digital Graphics & Animation (1/2 credit) Digital Media I (1/2 or 1 credit) Digital Media II (1/2 or 1 credit) Introduction to Business Computer Applications (1/2 or 1 credit) Java Programming (1/2 or 1 credit) Multimedia Productions or Multimedia Presentations (1/2 or 1 credit) Technology Education Computer Applications (1/2 or 1 credit) Telecommunications (1/2 credit) Web Mastering or Web Design (1/2 credit) Word Processing (1/2 or 1 credit) Independent Study in Technology Applications (1/2 or 1 credit)

A.5.a.ii. - J.3.b.ii. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3025, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), repromulgated LR 24:636 (April 1998), amended LR 24:1902 (October 1998), LR 24:2237 (December 1998), LR 25:257 (February 1999), LR 25:655 (April 1999), LR 25:1794 (October 1999), LR 26:64, 67 (January 2000), LR 26:689 (April 2000), LR 26:1262 (June 2000), LR 26:1602 (August 2000), LR 26:1996, 1999, 2001 (September 2000), LR 26:2268 (October 2000), LR 26:2753 (December 2000), LR 27:36 (January 2001), LR 27:702 (May 2001), LR 27:1219, 1219 (August 2001), repromulgated LR 27:1850 (November 2001), amended LR 28:772 (April 2002), LR 28:2330, 2332 (November 2002), LR 29:125 (February 2003), LR 29:2372 (November 2003), LR 30:1162 (June 2004), LR 30:1471 (July 2004), LR 30:2019 (September 2004), LR 31:37 (January 2005), LR 31:2213 (September 2005), LR 31:3112

(December 2005), LR 32:2239 (December 2006), LR 33:435 (March 2007), LR 33:2357 (November 2007).

George Badge Eldredge  
General Counsel

0711#017

**RULE**

**Tuition Trust Authority  
Office of Student Financial Assistance**

**START Savings Program—2006 Interest Rates  
(LAC 28:VI.315)**

The Louisiana Tuition Trust Authority (LATTA) has amended the Student Tuition Assistance and Revenue Trust (START Saving) Program Rules (R.S. 17:3091 et seq.). (ST0784R)

**Title 28  
EDUCATION**

**Part VI. Student Financial Assistance—Higher  
Education Savings—Tuition Trust Authority**

**Chapter 3. Education Savings Account**

**§315. Miscellaneous Provisions**

A. - B.14. ....

15. For the year ending December 31, 2006, the Louisiana Education Tuition and Savings Fund earned an interest rate of 5.11 percent.

16. For the year ending December 31, 2006, the Earnings Enhancements Fund earned an interest rate of 4.67 percent.

C. - S.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3091-3099.2.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:718 (June 1997), amended LR 24:1274 (July 1998), LR 26:1263 (June 2000), repromulgated LR 26:2267 (October 2000), amended LR 27:1221 (August 2001), LR 27:1884 (November 2001), LR 28:1761 (August 2002), LR 28:2335 (November 2002), LR 29:2038 (October 2003), repromulgated LR 29:2374 (November 2003), amended LR 30:791 (April 2004), LR 30:1472 (July 2004), LR 31:2216 (September 2005), LR 32:1434 (August 2006), LR 32:2240 (December 2006), LR 33:2359 (November 2007).

George Badge Eldredge  
General Counsel

0711#018

**RULE**

**Department of Environmental Quality  
Office of the Secretary  
Legal Affairs Division**

**Extension of Compliance Deadlines for CAFO Permits  
(LAC 33:IX.2501, 2505, and 2703)(WQ073ft)**

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the

secretary has amended the Water Quality regulations, LAC 33:IX.2501, 2505, and 2703 (Log #WQ073ft).

This Rule is identical to federal regulations found in 72 FR 40245-40250, No. 141 (July 24, 2007), which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 219-3550 or Box 4302, Baton Rouge, LA 70821-4302. No fiscal or economic impact will result from the Rule; therefore, the Rule will be promulgated in accordance with R.S. 49:953(F)(3) and (4).

This Rule implements the July 24, 2007, revision to the Environmental Protection Agency dates established in the 2003 Concentrated Animal Feeding Operations (CAFOs) rule, issued on February 12, 2003, by which facilities newly defined as CAFOs were required to seek permit coverage and by which all CAFOs were required to have nutrient management plans (NMPs) developed and implemented. EPA extended the date by which operations defined as CAFOs as of April 14, 2003, that were not defined as CAFOs prior to that date, must seek National Pollutant Discharge Elimination System (NPDES) permit coverage from July 31, 2007, to February 27, 2009. EPA also amended the date by which operations that become defined as CAFOs after April 14, 2003, due to operational changes that would not have made them a CAFO prior to April 14, 2003, and that are not new sources, must seek NPDES permit coverage from July 31, 2007, to February 27, 2009. Finally, EPA extended the deadline by which CAFOs are required to develop and implement NMPs from July 31, 2007, to February 27, 2009.

Under authority of the Clean Water Act, which restores and maintains the chemical, physical, and biological integrity of the nation's waters, one of the core provisions of the act is to authorize and regulate the discharge of pollutants from point sources to waters of the United States. Section 502(14) of the CWA specifically includes CAFOs in the definition of the term "point source." The Department of Environmental Quality, Office of Environmental Services, became the NPDES permit issuing authority for the state of Louisiana on August 27, 1996. The Rule is necessary in order to comply with federal regulations that require the Louisiana Pollutant Discharge Elimination System (LPDES) program to be consistent with the NPDES program. The basis and rationale for this Rule are to mirror the federal regulations.

This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

### **Title 33**

## **ENVIRONMENTAL QUALITY**

### **Part IX. Water Quality**

#### **Subpart 2. The Louisiana Pollutant Discharge Elimination System (LPDES) Program**

#### **Chapter 25. Permit Application and Special LPDES Program Requirements**

##### **§2501. Application for a Permit**

A. - I.1.i. ...

j. for CAFOs that must seek coverage under a permit after February 27, 2009, certification that a nutrient management plan has been completed and will be implemented upon the date of permit coverage.

I.2. - R.5.b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:723 (June 1997), amended by the Office of the Secretary, LR 25:661 (April 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2552 (November 2000), LR 26:2756 (December 2000), LR 27:45 (January 2001), LR 28:465 (March 2002), LR 28:1766 (August 2002), LR 29:1462 (August 2003), repromulgated LR 30:230 (February 2004), amended by the Office of Environmental Assessment, LR 30:2028 (September 2004), LR 31:425 (February 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2509 (October 2005), LR 32:819 (May 2006), LR 33:2360 (November 2007).

##### **§2505. Concentrated Animal Feeding Operations**

A. - G.1. ...

2. Operations Defined as CAFOs as of April 14, 2003, Which Were Not Defined as CAFOs Prior to That Date. For all such CAFOs, the owner or operator of the CAFO must seek to obtain coverage under an LPDES permit by a date specified by the state administrative authority, but no later than February 27, 2009.

3. - 3.b. ...

c. if an operational change that makes the operation a CAFO would not have made it a CAFO prior to April 14, 2003, the operation has until February 27, 2009, or 90 days after becoming defined as a CAFO, whichever is later.

G.4. - H.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 28:467 (March 2002), LR 29:1463 (August 2003), repromulgated LR 30:230 (February 2004), amended by the Office of Environmental Assessment, LR 31:1577 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:819 (May 2006), LR 33:2360 (November 2007).

#### **Chapter 27. LPDES Permit Conditions**

##### **§2703. Additional Conditions Applicable to Specified Categories of LPDES Permits**

The following conditions, in addition to those set forth in LAC 33:IX.2701, apply to all LPDES permits within the categories specified below.

A. - E. ...

1. Requirements to Develop and Implement a Nutrient Management Plan. At a minimum, a nutrient management plan must include best management practices and procedures necessary to implement applicable effluent limitations and standards. Permitted CAFOs must have their nutrient management plans developed and implemented by February 27, 2009. CAFOs that seek to obtain coverage under a permit after February 27, 2009, must have a nutrient management plan developed and implemented upon the date of permit coverage. The nutrient management plan must, to the extent applicable:

1.a. - 4.g. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended by the Office of Environmental

Assessment, Environmental Planning Division, LR 26:2554 (November 2000), LR 29:1466 (August 2003), repromulgated LR 30:230 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2512 (October 2005), LR 32:819 (May 2006), LR 33:2360 (November 2007).

Herman Robinson, CPM  
Executive Counsel

0711#027

## RULE

### Department of Environmental Quality Office of the Secretary Legal Affairs Division

#### National Source Tracking System Reporting Requirements and Agreement State Updates (LAC 33:XV.493, 602, 2017, and 2051)(RP046ft)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Radiation Protection regulations, LAC 33:XV.493, 602, 2017, and 2051 (Log #RP046ft).

This Rule is identical to federal regulations found in 10 CFR 20.2207, 39.15, and 39.41 and 21 CFR 1020.30, which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 219-3550 or Box 4302, Baton Rouge, LA 70821-4302. No fiscal or economic impact will result from the Rule; therefore, the Rule will be promulgated in accordance with R.S. 49:953(F)(3) and (4).

This Rule updates the state radiation regulations to coincide with changes in the federal regulations and to mirror federal language. As part of the National Source Tracking System (NSTS), reporting requirements for nationally tracked sources are listed in 10 CFR 20.2207. This Rule adds the federal regulations in 10 CFR 20.2207 to the state radiation regulations. This Rule also makes other updates to meet Agreement State compatibility requirements and corrects a definition to mirror federal language. Requirements regarding compatibility are published under the Agreement State program. These changes are needed to comply with this program. The basis and rationale for this Rule are to mirror the federal regulations and maintain an adequate Agreement State program.

This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

### Title 33

### ENVIRONMENTAL QUALITY

#### Part XV. Radiation Protection

#### Chapter 4. Standards for Protection against Radiation

#### Subchapter J. Reports

#### §493. Reports of Transactions Involving Nationally Tracked Sources

A. Each licensee who manufactures, transfers, receives, disassembles, or disposes of a nationally tracked source shall complete and submit a national source tracking transaction

report as specified in Subsections B-F of this Section for each type of transaction.

B. Each licensee who manufactures a nationally tracked source shall complete and submit a national source tracking transaction report. The report must include the following information:

1. the name, address, and license number of the reporting licensee;
2. the name of the individual preparing the report;
3. the manufacturer, model, and serial number of the source;
4. the radioactive material in the source;
5. the initial source strength in becquerels (curies) at the time of manufacture; and
6. the manufacture date of the source.

C. Each licensee who transfers a nationally tracked source to another licensee shall complete and submit a national source tracking transaction report. The report must include the following information:

1. the name, address, and license number of the reporting licensee;
2. the name of the individual preparing the report;
3. the name and license number of the recipient licensee and the shipping address;
4. the manufacturer, model, and serial number of the source or, if not available, other information to uniquely identify the source;
5. the radioactive material in the source;
6. the initial or current source strength in becquerels (curies);
7. the date for which the source strength is reported;
8. the shipping date;
9. the estimated arrival date; and
10. for nationally tracked sources transferred as waste under a Uniform Low-Level Radioactive Waste Manifest, the waste manifest number and the identification of the container with the nationally tracked source.

D. Each licensee who receives a nationally tracked source shall complete and submit a national source tracking transaction report. The report must include the following information:

1. the name, address, and license number of the reporting licensee;
2. the name of the individual preparing the report;
3. the name, address, and license number of the licensee who provided the source;
4. the manufacturer, model, and serial number of the source or, if not available, other information to uniquely identify the source;
5. the radioactive material in the source;
6. the initial or current source strength in becquerels (curies);
7. the date for which the source strength is reported;
8. the date of receipt; and
9. for material received under a Uniform Low-Level Radioactive Waste Manifest, the waste manifest number and the identification of the container with the nationally tracked source.

E. Each licensee who disassembles a nationally tracked source shall complete and submit a national source tracking transaction report. The report must include the following information:

1. the name, address, and license number of the reporting licensee;
2. the name of the individual preparing the report;
3. the manufacturer, model, and serial number of the source or, if not available, other information to uniquely identify the source;
4. the radioactive material in the source;
5. the initial or current source strength in becquerels (curies);
6. the date for which the source strength is reported; and
7. the disassembly date of the source.

F. Each licensee who disposes of a nationally tracked source shall complete and submit a national source tracking transaction report. The report must include the following information:

1. the name, address, and license number of the reporting licensee;
2. the name of the individual preparing the report;
3. the waste manifest number;
4. the identification of the container with the nationally tracked source;
5. the date of disposal; and
6. the method of disposal.

G. The reports specified in Subsections B-F of this Section shall be submitted by the close of the next business day after the transaction. A single report may be submitted for multiple sources and transactions. The reports shall be submitted to the national source tracking system:

1. using the on-line national source tracking system;
2. electronically, using a computer-readable format;
3. by facsimile;
4. by mail, to the address on the National Source Tracking Transaction Report Form (NRC Form 748); or
5. by telephone, with follow-up by facsimile or mail.

H. Each licensee shall correct any error in previously filed reports or file a new report for any missed transaction within five business days of the discovery of the error or missed transaction. Such errors may be detected by a variety of methods, such as administrative reviews or physical inventories required by regulation. In addition, each licensee shall reconcile the inventory of nationally tracked sources possessed by the licensee against that licensee's data in the national source tracking system. The reconciliation must be conducted during the month of January in each year. The reconciliation process must include resolving any discrepancies between the national source tracking system and the actual inventory by filing the applicable reports specified in Subsections B-F of this Section. By January 31 of each year, each licensee must submit to the national source tracking system confirmation that the data in the national source tracking system is correct.

I. Each licensee who possesses Category 1 nationally tracked sources shall report the initial inventory of the licensee's Category 1 nationally tracked sources to the national source tracking system by November 15, 2007. Each licensee who possesses Category 2 nationally tracked sources shall report the initial inventory of the licensee's Category 2 nationally tracked sources to the national source tracking system by November 30, 2007. The information may be submitted by using any of the methods specified in

Paragraphs G.1-4 of this Section. The initial inventory report must include the following information:

1. the name, address, and license number of the reporting licensee;
2. the name of the individual preparing the report;
3. the manufacturer, model, and serial number of each nationally tracked source or, if not available, other information to uniquely identify the source;
4. the radioactive material in the sealed source;
5. the initial or current source strength in becquerels (curies); and
6. the date for which the source strength is reported.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:2361 (November 2007).

## **Chapter 6. X-Rays in the Healing Arts**

### **§602. Definitions**

As used in this Chapter, the following definitions apply. Other definitions applicable to this Chapter may be found in LAC 33:XV.Chapters 1 and 2.

\* \* \*

*Half-Value Layer*—the thickness of specified material that attenuates the beam of radiation to an extent that the exposure rate is reduced by one half. In this definition, the contribution of all scattered radiation, other than any that might be present initially in the beam concerned, is deemed to be excluded.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 19:1421 (November 1993), LR 23:1139 (September 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2585 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2362 (November 2007).

## **Chapter 20. Radiation Safety Requirements for Wireline Service Operations and Subsurface Tracer Studies**

### **§2017. Design, Performance, and Certification Criteria for Sealed Sources Used in Downhole and Well-Logging Operations**

A. Sealed Source Used in Downhole and Well-Logging Applications

1. A licensee may use a sealed source in downhole and well-logging applications if the sealed source:
  - a. is doubly encapsulated;
  - b. contains licensed material whose chemical and physical forms are as insoluble and nondispersible as practical; and
  - c. meets one of the following requirements:
    - i. for a sealed source manufactured on or before July 14, 1989, the requirements of USASI N5.10-1968, "Classification of Sealed Radioactive Sources," or the requirements in Clause A.1.c.ii or iii of this Section; or
    - ii. for a sealed source manufactured after July 14, 1989, the oil well-logging requirements of ANSI/HPS N43.6-1997, "Sealed Radioactive Sources—Classification"; or

iii. for a sealed source manufactured after July 14, 1989, the sealed source's prototype has been tested and found to maintain its integrity after each of the following tests:

(a). Temperature Test. The test source must be held at -40°C for 20 minutes, 600°C for 1 hour, and then be subjected to a thermal shock test with a temperature drop from 600°C to 20°C within 15 seconds;

(b). Impact Test. A 5 kg steel hammer, 2.5 cm in diameter, must be dropped from a height of 1 m onto the test source;

(c). Vibration Test. The test source must be subjected to a vibration from 25 Hz to 500 Hz at 5 g amplitude for 30 minutes;

(d). Puncture Test. A 1 gram hammer and pin, 0.3 cm pin diameter, must be dropped from a height of 1 m onto the test source;

(e). Pressure Test. The test source must be subjected to an external pressure of  $1.695 \times 10^7$  pascals (24,600 pounds per square inch absolute).

2. The requirements in Subparagraphs A.1.a-c of this Section do not apply to sealed sources that contain licensed material in gaseous form.

3. The requirements in Subparagraphs A.1.a-c of this Section do not apply to energy compensation sources (ECS). ECSs must be registered with the U.S. Nuclear Regulatory Commission, an agreement state, or the Office of Environmental Compliance.

B. For sealed sources, except those containing radioactive material in gaseous form, acquired after July 14, 1989, in the absence of a certificate from a transferor certifying that an individual sealed source meets the requirements of LAC 33:XV.2017.A, the sealed source shall not be put into use until such determinations and testing have been performed.

C. Each sealed source, except those containing radioactive material in gaseous form, used in downhole operations after July 14, 1989, shall be certified by the manufacturer, or other testing organization acceptable to the Office of Environmental Compliance, as meeting the sealed source performance requirements for oil well-logging as contained in the American National Standard N542, "Sealed Radioactive Sources, Classification," in effect on October 20, 1987.

D. ...

E. Energy Compensation Source. The licensee may use an energy compensation source (ECS) that is contained within a logging tool, or other tool components, only if the ECS contains quantities of licensed material not exceeding 3.7 MBq (100 microcuries).

1. For well-logging applications with a surface casing for protecting fresh water aquifers, use of the ECS is only subject to the requirements of LAC 33:XV.2014, 2015, and 2016.

2. For well-logging applications without a surface casing for protecting fresh water aquifers, use of the ECS is only subject to the requirements of Subsection G of this Section and LAC 33:XV.2004, 2014, 2015, 2016, and 2051.

F. Tritium Neutron Generator Target Source

1. Use of a tritium neutron generator target source, containing quantities not exceeding 1,110 MBq (30 curies)

and in a well with a surface casing to protect fresh water aquifers, is subject to the requirements of these regulations except Subsections A and E of this Section and LAC 33:XV.2051.

2. Use of a tritium neutron generator target source, containing quantities exceeding 1,110 MBq (30 curies) or in a well without a surface casing to protect fresh water aquifers, is subject to the requirements of these regulations except Subsections A and E of this Section.

G. Use of a Sealed Source in a Well without a Surface Casing. The licensee may use a sealed source in a well without a surface casing for protecting fresh water aquifers only if the licensee follows a procedure for reducing the probability of the source becoming lodged in the well. The procedure must be approved by the Office of Environmental Compliance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2605 (November 2000), LR 29:1472 (August 2003), amended by the Office of Environmental Assessment, LR 31:55 (January 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2538 (October 2005), LR 33:2362 (November 2007).

#### **Subchapter D. Notification**

#### **§2051. Notification of Incidents, Abandonment, and**

#### **Lost Sources**

A. - D.2.c. ...

d. the name of the well owner or well operator, as appropriate;

e. the well name and well identification number(s) or other designation;

f. the sealed source(s) by radionuclide and quantity of activity;

g. the source depth and the depth to the top of the plug; and

h. an appropriate warning, depending on the specific circumstances of each abandonment. Appropriate warnings may include "DO NOT DRILL BELOW PLUG BACK DEPTH"; "DO NOT ENLARGE CASING"; or "DO NOT RE-ENTER THE HOLE", followed by the words, "BEFORE CONTACTING THE OFFICE OF ENVIRONMENTAL COMPLIANCE, LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY".

E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), LR 21:555 (June 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2606 (November 2000), LR 29:1473 (August 2003), LR 30:1679 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2363 (November 2007).

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Executive Counsel

0711#026

## RULE

**Department of Environmental Quality  
Office of the Secretary  
Legal Affairs Division**

Use or Disposal of Sewage Sludge and Biosolids  
(LAC 33:VII.301 and IX.107, 2301, 2313,  
7301, 7303, 7305, 7307, 7309, 7311,  
7313, 7395, 7397, and 7399)(OS066)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Environmental Quality regulations, LAC 33:VII.301 and IX.107, 2301, 2313, 7301, 7303, 7305, 7307, 7309, 7311, 7313, 7395, 7397, and 7399 (Log #OS066).

This Rule removes the provision that restricted the usage of the sewage sludge regulations until such time that the department received delegation for the Sewage Sludge Management Program from the Environmental Protection Agency (EPA). The EPA has had the program implemented in the state since 1993 and will continue to implement the program at the federal level through the Standards for the Use or Disposal of Sewage Sludge regulations in 40 CFR Part 503, in accordance with Section 405(d) and (e) of the Clean Water Act, until such time as the state assumes delegation of the Sewage Sludge Management Program from EPA. Updating and clarification of the regulations are necessary to fully implement the Rule at the state level in Louisiana. The regulations are being moved from LAC 33:IX.Chapter 69, and associated appendices in Chapter 71, to LAC 33:IX.Chapter 73. Amendments include restrictions as to what materials can be prepared with sewage sludge; revisions to sewage sludge treatment facility site requirements; revisions to the financial assurance requirements; provisions to allow the land application of a mixture of sewage sludge and grease pumped or removed from a food service establishment; certification of preparers of sewage sludge and land applicators of biosolids; provisions for closure of treatment facilities that were utilized for the treatment of sanitary wastewater or sewage sludge; and permit application submittal deadlines. This Rule promulgates certain provisions of Emergency Rule OS066E7 for the permitting and regulating of sewage sludge use and disposal practices. The basis and rationale for this Rule are to provide for the proper regulating of sewage sludge activities for better protection of human health and the environment.

This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

## Title 33

### ENVIRONMENTAL QUALITY

#### Part VII. Solid Waste

##### Subpart 1. Solid Waste Regulations

#### Chapter 3. Scope and Mandatory Provisions of the Program

##### §301. Exempted Waste

A. All *solid wastes*, as defined by the Act and these regulations, are subject to the provisions of these regulations, except as follows:

1. wastes regulated under other authority and not processed or disposed of in solid waste facilities permitted under these regulations, including but not limited to, the following wastes:

a. agricultural-crop residues, aquacultural residues, silvicultural residues, and other agricultural wastes stored, processed, or disposed of on the site where the crops are grown or that are stored, processed, or disposed in accordance with a best management practice plan that has been provided to the Office of Environmental Services and approved in writing by the Department of Agriculture, and within the jurisdiction of the Department of Agriculture;

b. mining overburden, spoils, tailings, and related solid wastes within the jurisdiction of the Department of Natural Resources, Office of Conservation;

c. produced-waste fluids and muds resulting from the exploration for or production of petroleum and geothermal energy, and all surface and storage waste facilities incidental to oil and gas exploration and production, within the jurisdiction of the Department of Natural Resources, Office of Conservation;

d. uncontaminated dredge or earthen excavation spoil;

e. solid wastes while they are stored at residences or commercial establishments and regulated by local ordinance, or within the jurisdiction of the Department of Health and Hospitals;

f. uncontaminated residues from beneficiation of earthen material;

g. uncontaminated storm water and uncontaminated noncontact cooling water;

h. infectious waste or other hospital or clinic wastes that are not processed or disposed of in solid waste processing or disposal facilities permitted under these regulations; and

i. sewage sludge (including domestic septage) that is generated, treated, processed, composted, blended, mixed, prepared, transported, used, or disposed of in accordance with LAC 33:IX.Chapter 73. Sewage sludge and domestic septage not managed in accordance with LAC 33:IX.Chapter 73 shall be managed in accordance with these regulations; and

2. wastes excluded by the definition of *solid waste* in the Act and/or as otherwise specified in the Act, including:

a. hazardous wastes subject to regulation under R.S. 30:2171 et seq.;

b. solid or dissolved material in domestic sewage (such as domestic-oxidation ponds), except separated sludges;

c. solid or dissolved materials in irrigation-return flow;

d. discharges that are downstream from point sources subject to permit under R.S. 30:2074, except waste contained in solid waste facilities prior to the final discharge point, provided, however, that:

i. wastewaters in existing ditches that are downstream of a designated internal state or federal wastewater discharge point are exempt from the definition of *solid waste* if they require no further treatment to meet final state or federal wastewater discharge point permit limits or if they require only pH adjustment to meet final pH permit limits, or suspended solids settling specifically to meet final total suspended solids permit limits;

ii. wastewaters in existing ditches upstream of a designated final state or federal wastewater discharge point that require no further treatment to meet final state or federal permit limits or that only require pH adjustment to meet final pH permit limits, or solids settling specifically to meet total suspended solids permit limits, are exempt from the definition of *solid waste*;

iii. solids or sludges in ditches are exempt from the definition of *solid waste* until such time as such solids or sludges are removed from the ditches for disposal, provided however, that this exclusion from the definition of solid waste only applies to solids and sludges derived from wastewaters described in Clauses A.2.d.i and ii of this Section;

iv. the administrative authority reserves the right to withdraw the exemption for wastewaters in Clauses A.2.d.i and ii of this Section if the wastewaters contribute to groundwater contamination;

e. source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.); and

f. compost produced by an individual for his own beneficial use, as provided in R.S. 30:2416(G).

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended LR 22:279 (April 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2515 (November 2000), LR 28:780 (April 2002), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2485 (October 2005), LR 33:1027 (June 2007), LR 33:2140 (October 2007), LR 33:2365 (November 2007).

## Part IX. Water Quality

### Subpart 1. Water Pollution Control

#### Chapter 1. General Provisions

##### §107. Definitions

\* \* \*

*Sewage Sludge*—any solid, semisolid, or liquid residue removed during the treatment of municipal wastewater or domestic sewage. *Sewage sludge* includes, but is not limited to, solids removed during primary, secondary, or advanced wastewater treatment, scum, domestic septage, portable

toilet pumpings, Type III marine sanitation device pumpings (33 CFR Part 159), and sewage sludge products. *Sewage sludge* does not include grit or screenings, or ash generated during the incineration of sewage sludge.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 11:1066 (November 1985), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2538 (November 2000), LR 30:1473 (July 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 32:1857 (October 2006), LR 33:2365 (November 2007).

### Subpart 2. The Louisiana Pollutant Discharge Elimination System (LPDES) Program

#### Chapter 23. Definitions and General LPDES Program Requirements

##### §2301. General Conditions

A. The conditions and requirements in this Chapter apply only to facilities and discharges within the scope of coverage of the NPDES program and to permits issued in accordance with the assumption of the NPDES program. Provisions of the federal regulations addressing sewage sludge use and disposal have been retained and state terminology has been substituted for federal terminology as appropriate. Unless specifically indicated in LAC 33:IX.Chapter 73 as being applicable, requirements relative to a state sewage sludge management program in LAC 33:IX.Chapters 23-71 are not applicable until the Department of Environmental Quality (DEQ) receives the sewage sludge management program authority, in accordance with 40 CFR Part 501 under the NPDES program. Until DEQ receives the sewage sludge management program authority, in accordance with 40 CFR Part 501 under the NPDES program, the requirements relative to the state sewage sludge management program are those in LAC 33:IX.Chapter 73. In accordance with R.S. 40:4(A)(6), plans and specifications for a sanitary wastewater treatment facility are reviewed and approved by the state health officer or his designee.

B. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:199 (February 1997), LR 23:722 (June 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1467 (August 1999), LR 26:1609 (August 2000), LR 27:2231 (December 2001), LR 28:996 (May 2002), LR 29:700 (May 2003), repromulgated LR 30:230 (February 2004), LR 30:752 (April 2004), amended by the Office of Environmental Assessment, LR 31:920 (April 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:604 (April 2006), LR 33:641 (April 2007), LR 33:2365 (November 2007).

##### §2313. Definitions

A. The following definitions apply to LAC 33:IX.Chapters 23-35. Terms not defined in this Section have the meaning given by the CWA.

\* \* \*

*Sewage Sludge*—any solid, semi-solid, or liquid residue removed during the treatment of municipal wastewater or domestic sewage. *Sewage sludge* includes, but is not limited to, solids removed during primary, secondary, or advanced

wastewater treatment, scum, domestic septage, portable toilet pumpings, Type III marine sanitation device pumpings (33 CFR Part 159), and sewage sludge products. *Sewage sludge* does not include grit or screenings, or ash generated during the incineration of sewage sludge.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended by the Water Pollution Control Division, LR 23:722 (June 1997), LR 23:1523 (November 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2755 (December 2000), LR 28:464 (March 2002), repromulgated LR 30:230 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2365 (November 2007).

Note: Former Chapter 69 has moved to Subpart 3, Chapter 73.

Note: §6901 has moved to §7301.

Note: §6903 has moved to §7303.

Note: §6905 has moved to §7305.

Note: §6907 has moved to §7307.

Note: §6909 has moved to §7309.

Note: §6911 has moved to §7311.

Note: §7131 has moved to §7397.

Note: §7133 has moved to §7399.

Note: §7135 has moved to §7395.

### **Subpart 3. Louisiana Sewage Sludge and Biosolids Program**

#### **Chapter 73. Standards for the Use or Disposal of Sewage Sludge and Biosolids [Formerly Chapter 69]**

##### **Subchapter A. Program Requirements**

##### **§7301. General Provisions [Formerly §6901]**

###### **A. Purpose and Applicability**

###### **1. Purpose**

a. This Chapter establishes standards for the use or disposal of sewage sludge generated during the treatment of domestic sewage in a treatment works and of domestic septage (hereafter referred to collectively as *sewage sludge* for the purposes of this Chapter), biosolids, and grease that was pumped or removed from a food service facility and mixed with sewage sludge.

b. The standards established in this Chapter include:

i. general requirements and other requirements for bulk biosolids, general management practices and other management practices for bulk biosolids, pollutant limits, pathogen and vector attraction reduction requirements, and optional standards;

ii. sampling and monitoring requirements, recordkeeping and reporting requirements, specific exclusions, and prohibitions and restrictions regarding the use and disposal of sewage sludge and biosolids; and

iii. the siting, operation, and financial assurance requirements for commercial preparers of sewage sludge or land applicers of biosolids.

c. This Chapter establishes requirements for the person who prepares sewage sludge that is disposed in a landfill.

d. In addition, this Chapter contains specific prohibitions and restrictions regarding the use and disposal of sewage sludge and biosolids.

###### **2. Applicability**

a. This Chapter applies to any person who:

i. prepares sewage sludge or biosolids, including the dewatering and solidification of sewage sludge;

ii. applies biosolids to the land;

iii. prepares sewage sludge, including the dewatering and solidification of sewage sludge, that is disposed in a landfill;

iv. owns/operates a surface disposal site; and

v. owns/operates a sewage sludge incinerator.

b. This Chapter also applies to:

i. biosolids that are applied to the land and sewage sludge that is disposed at a surface disposal site or at a landfill;

ii. sewage sludge fired in a sewage sludge incinerator, a sewage sludge incinerator and the exit gas from a sewage sludge incinerator, land where biosolids are applied, and a surface disposal site; and

iii. grease that is pumped or removed from a food service facility and is mixed with sewage sludge.

**B. General Definitions.** The following terms used in this Chapter shall have the meanings listed below, unless the context clearly indicates otherwise, or the term is specifically redefined in a particular Section.

*Administrative Authority*—the Secretary of the Department of Environmental Quality or his designee or the appropriate assistant secretary or his designee.

*Air Operations Area*—any area of an airport used or intended to be used for landing, takeoff, or surface maneuvering of aircraft. *Air operations areas* include paved areas or unpaved areas that are used or intended to be used for the unobstructed movement of aircraft, in addition to its associated runways, taxiways, or aprons.

*Apply Biosolids or Biosolids Applied to the Land*—land application of biosolids.

*Base Flood*—a flood that has a 1 percent chance of occurring in any given year (i.e., a flood with a magnitude equaled once in 100 years).

*Beneficial Use*—the use of biosolids for the purpose of soil conditioning or crop or vegetative fertilization in a manner that does not pose a danger of adverse effects upon human health or the environment or cause any deterioration of land surfaces, soils, surface waters, or groundwater.

*Biosolids*—sewage sludge, or material derived from sewage sludge, that is nonhazardous, has a PCB concentration of less than 50 mg/kg of total solids (dry weight), and is prepared to meet one of the pollutant requirements of LAC 33:IX.7303.E, one of the pathogen requirements in LAC 33:IX.7309.C, and one of the vector attraction reduction requirements in LAC 33:IX.7309.D.

*Bulk Biosolids*—biosolids that are not sold or given away in a bag or other container for application to the land.

*Class B Biosolids*—biosolids that do not meet one or more of the following requirements:

a. the pollutant concentrations in Table 3 of LAC 33:IX.7303.E;

b. the pathogen requirements in LAC 33:IX.7309.C.1;

c. one of the vector attraction reduction requirements in LAC 33:IX.7309.D.2.a-e; and/or

d. a PCB concentration of less than 10 mg/kg of total solids (dry weight basis).

*Class I Sludge Management Facility*—for the purposes of this Chapter:

a. any *publicly owned treatment works (POTW)* or *privately owned sanitary wastewater treatment facility (POSWTF)*, as defined in this Subsection, regardless of its ownership, that is used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage;

b. any person who prepares sewage sludge or biosolids, including a commercial preparer of sewage sludge and pumper of sewage sludge who prepares sewage sludge or biosolids;

c. an owner/operator of a sewage sludge incinerator; and

d. an applier of biosolids to the land, including a commercial land applier of biosolids.

*Commercial Preparer of Sewage Sludge*—any person who prepares sewage sludge for monetary profit or other financial consideration and either the person is not the generator of the sewage sludge or the sewage sludge was obtained from a facility or facilities not owned by or associated with the applier.

*Commercial Land Applier of Biosolids*—any person who applies biosolids to the land for monetary profit or other financial consideration and the biosolids were obtained from a facility or facilities not owned by or associated with the person.

*Container*—any stationary or portable device in which sewage sludge or biosolids are stored or transported.

*Contaminate an Aquifer*—to introduce a substance that causes the maximum contaminant level for nitrate in 40 CFR 141.62(b) to be exceeded in the groundwater, or that causes the existing concentration of nitrate in groundwater to increase when the existing concentration exceeds the maximum contaminant level for nitrate in 40 CFR 141.62(b).

*Cover Crop*—a small grain crop, such as oats, wheat, or barley, not grown for harvest.

*Domestic Septage*—liquid or solid material removed from a septic tank, holding tank or similar device, cesspool, portable toilet, Type III marine sanitation device, or similar treatment works that receives only domestic sewage. *Domestic septage* does not include liquid or solid material removed from a septic tank, holding tank or similar device, cesspool, or similar treatment works that receives either commercial wastewater or industrial wastewater, and does not include grease removed from a grease trap at a *food service facility*, as defined in this Subsection.

*Domestic Sewage*—waste and wastewater from humans or household operations that is discharged to or otherwise enters a treatment works.

*Dry Weight Basis*—calculated on the basis of having been dried at 105°C until reaching a constant mass (i.e., essentially 100 percent solids content).

*Exceptional Quality Biosolids*—biosolids that are nonhazardous and meet the ceiling concentrations in Table 1 of LAC 33:IX.7303.E, the pollutant concentrations in Table 3 of LAC 33:IX.7303.E, the pathogen requirements in LAC 33:IX.7309.C.1, and one of the vector attraction reduction

requirements in LAC 33:IX.7309.D.2.a-e, and that have a PCB concentration of less than 10 mg/kg of total solids (dry weight).

*Feed Crop*—a crop produced primarily for consumption by animals.

*Feedstock*—primarily biologically decomposable organic material that is blended, mixed, or composted with sewage sludge.

*Fiber Crops*—crops such as flax and cotton.

*Food Crops*—crops consumed by humans. These include, but are not limited to, fruits, vegetables, and tobacco.

*Food Service Facility*—any facility that prepares and/or packages food or beverages for sale or consumption, on- or off-site, with the exception of private residences. *Food service facilities* include, but are not limited to, food courts, food manufacturers, food packagers, restaurants, grocery stores, bakeries, lounges, hospitals, hotels, nursing homes, churches, schools, and other similar facilities.

*Free Air Space, n*—air-filled pore volume of an as-received compost material. Express *free air space* as a percentage, volume of *free air space* per unit volume of compost (% v v, ±0.1 %).

*Grease*—a material, either liquid or solid, composed primarily of fat, oil, or grease from animal or vegetable sources. The terms *fats, oils, and grease; oil and grease; and oil and grease substances* shall all be included within this definition.

*Groundwater*—water below the land surface in the saturated zone.

*Industrial Park*—an area that is legally zoned for the purpose of the construction and operation of a group of industries and businesses and entered as legally zoned for such purpose in the public records of the state, parish, city, town, or community where the park is located.

*Industrial Wastewater*—wastewater generated in a commercial or industrial process.

*Institution*—the building or buildings that are utilized to house an established organization or foundation, especially one dedicated to public service or to culture. An *institution* includes, but is not limited to, an established school, hospital, business, day-care facility, nursing home, hotel/motel, playground, park, golf course, place of worship, or restaurant/food establishment.

*Land Application*—the beneficial use of biosolids by either spraying or spreading onto the land surface, injection below the land surface, or incorporation into the soil.

*Material Derived from Sewage Sludge*—biosolids that are produced when sewage sludge is prepared with other solid waste materials, feedstocks, supplements, and industrial sludges that are approved to be prepared with sewage sludge under these regulations.

*Other Container*—an open or closed receptacle, including, but not limited to, a bucket, a box, a carton, and a vehicle or trailer with a load capacity of 1 metric ton or less.

*Permitting Authority*—EPA or a state with an EPA-approved sludge management program.

*Person Who Prepares Sewage Sludge*—the person who generates sewage sludge during the treatment of domestic sewage in a treatment works, the person who treats sewage sludge, or the person who derives a material from sewage sludge.

*Pollutant*—an organic substance, an inorganic substance, a combination of organic and inorganic substances, or a pathogenic organism that, after discharge and upon exposure, ingestion, inhalation, or assimilation into an organism either directly from the environment or indirectly by ingestion through the food chain, could, on the basis of information available to the administrative authority, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunction in reproduction), or physical deformations in either the affected organism or offspring of the organism.

*Pollutant Limit*—a numerical value that describes the amount of a pollutant allowed per unit amount of sewage sludge (e.g., milligrams per kilogram of total solids); the amount of a pollutant that can be applied to a unit area of land (e.g., kilograms per hectare); or the volume of a material that can be applied to a unit area of land (e.g., gallons per acre).

*Private Land Applier*—anyone who applies biosolids to the land for private benefit purposes, where the land application is not for monetary profit or other financial consideration, and either the applier did not generate or prepare the sewage sludge or material derived from sewage sludge, or the facility or facilities from which the biosolids were obtained are not owned by or associated with the private land applier.

*Privately Owned Sanitary Wastewater Treatment Facility (POSWTF)*—a privately owned treatment works that is utilized to treat sanitary wastewater and is not a publicly owned treatment works (POTW), as defined in this Subsection.

*Publicly Owned Treatment Works (POTW)*—a treatment works, as defined by Section 212 of the Clean Water Act, that is owned by a state or municipality, as defined by Section 502(3) and (4) of the Clean Water Act. This includes all devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. It includes sewers, pipes, and other conveyances only if they convey wastewater to a POTW; and the municipality, as defined by Section 502(4) of the Clean Water Act, that has jurisdiction over the indirect discharges to and the discharges from such a treatment works.

*Pumper of Sewage Sludge*—a person who removes sludge from a sanitary wastewater treatment facility; domestic septage from a residential septic tank, mechanical treatment plant, or dump station for recreational vehicles and watercrafts or vessels; residuals from a portable toilet; or grease from a food service facility that is mixed with sewage sludge.

*Qualified Groundwater Scientist*—an individual with a baccalaureate or post-graduate degree in the natural sciences or engineering, who has sufficient training and experience in groundwater hydrology, subsurface geology, and/or a related field, as may be demonstrated by state registration, professional certification, or completion of accredited university programs, to make sound professional judgments regarding groundwater monitoring, pollutant fate and transport, and corrective action.

*Responsible Official*—a person who meets any of the following criteria:

a. for a corporation—a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities;

b. for a partnership or sole proprietorship—a general partner or the proprietor, respectively; or

c. for a municipality or a state, federal, or other public agency—either a principal executive officer or ranking elected official. For the purposes of this Subpart, a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

*Runoff*—rainwater, leachate, or other liquid that drains overland on any part of a land surface and runs off of the land surface.

*Sewage Sludge*—any solid, semisolid, or liquid residue removed during the treatment of municipal wastewater or domestic sewage. *Sewage sludge* includes, but is not limited to, solids removed during primary, secondary, or advanced wastewater treatment, scum, domestic septage, portable toilet pumpings, type III marine sanitation device pumpings (33 CFR Part 159), and sewage sludge products. *Sewage sludge* does not include grit or screenings, or ash generated during the incineration of sewage sludge.

*Sludge-Only Facility*—any facility whose methods of sewage sludge use or disposal are subject to regulations promulgated in accordance with Section 405(d) of the Clean Water Act, and that is required to obtain a permit under Subsection D of this Section.

*Storage Facility*—an area of land or constructed facility committed to hold sewage sludge or biosolids until the material may be used or disposed at on- or off-site locations.

*Storage of Sewage Sludge or Biosolids*—the temporary placement of sewage sludge or biosolids in a container, storage facility, tank, or directly on the land. *Storage of sewage sludge or biosolids* does not pertain to a container or tank that is utilized for the treatment of sewage sludge, as defined in this Subsection.

*Supplements*—materials blended, composted, or mixed with sewage sludge or other feedstock and sewage sludge in order to raise the moisture level and/or adjust the carbon-to-nitrogen ratio, and materials added during composting or to compost to provide attributes required by customers for certain compost products.

*Surface Disposal*—a use or disposal of sewage sludge on the land that does not meet the criteria of *land application*, as defined in this Subsection.

*Tank*—a stationary device designed to contain an accumulation of sewage sludge or biosolids that is constructed primarily of non-earthen materials (e.g., wood, concrete, steel, plastic), which provide structural support.

*Treatment of Sewage Sludge*—the preparation of sewage sludge for final use or disposal. This includes, but is not limited to, blending, mixing, composting, thickening, stabilization, and dewatering and solidification of sewage sludge. This does not include storage of sewage sludge.

*Treatment Works*—a federally owned, publicly owned, or privately owned device or system used to treat (including recycle and reclaim) either domestic sewage or a combination of domestic sewage and industrial waste of a liquid nature.

TSCA—Toxic Substances Control Act.

### C. Compliance Period

1. Compliance with Standards. Except as otherwise specified in this Chapter and in Paragraph C.3 of this Section, compliance with the standards in this Chapter shall be achieved as expeditiously as practicable, but in no case later than February 19, 1994. When compliance with the standards requires construction of new pollution control facilities, compliance with the standards shall be achieved as expeditiously as practicable, but in no case later than February 19, 1995.

2. Frequency of Monitoring, Recordkeeping, and Reporting. The requirements for frequency of monitoring, recordkeeping, and reporting in this Chapter for total hydrocarbons in the exit gas from a sewage sludge incinerator are effective February 19, 1994, or if compliance with the operational standard for total hydrocarbons in this Chapter requires the construction of new pollution control facilities, February 19, 1995. All other requirements for frequency of monitoring, recordkeeping, and reporting in this Chapter are effective on July 20, 1993.

### 3. Compliance with Requirements

a. Unless otherwise specified in LAC 33:IX.7311, compliance with the requirements in LAC 33:IX.7311.B, beginning with the definition of *average daily concentration* through the definition of *wet scrubber*, LAC 33:IX.7311.D.3, 4, and 5, F.5, 6, 7, 8.d, and 10, G.1.a and c, G.3, and H.2.e shall be achieved as expeditiously as practicable, but in no case later than September 5, 2000. When new pollution control facilities must be constructed to comply with the revised requirements in LAC 33:IX.7311, compliance with the revised requirements shall be achieved as expeditiously as practicable, but no later than September 4, 2001.

b. Compliance with the requirements in Paragraphs G.2, 3, and 4 of this Section shall be achieved as follows.

i. A facility presently meeting all of the requirements for surface disposal in 40 CFR 503, Subpart C, must comply with the requirements in Paragraph G.2 of this Section as expeditiously as practicable, but in no case later than September 1, 2007.

ii. A facility that does not meet all of the requirements for surface disposal in 40 CFR 503, Subpart C, must comply with the requirements in Paragraph G.2 of this Section by December 30, 2005.

iii. All facilities must comply with the requirements in Paragraphs G.3 and 4 of this Section as expeditiously as practicable, but in no case later than September 1, 2007.

### D. Permits and Permitting Requirements

1. Except as exempted in Paragraph D.2 of this Section, no person shall prepare sewage sludge or biosolids, prepare sewage sludge and dispose of the prepared sewage sludge in a permitted landfill, apply biosolids to the land, or own or operate a sewage sludge incinerator without first obtaining a permit in accordance with the deadlines set forth in Subparagraphs D.1.a-c of this Section. The permit shall

identify and regulate the specific use, disposal, storage, and treatment of sewage sludge described in the permit application.

a. As of December 30, 2005, the following permitting requirements apply.

i. Those persons who have been granted an exemption under LAC 33:Part VII for any form of use or disposal of sewage sludge will have 180 days to submit an application for permit coverage under these regulations.

ii. Those persons who have been issued a standard solid waste permit under LAC 33:Part VII for the use, disposal, treatment, or processing of sewage sludge, with the exception of a standard solid waste permit issued for a type of *surface disposal*, as defined in Subsection B of this Section, may continue operations under the standard solid waste permit until such time as a permit has been reissued under these regulations by the administrative authority or for a period not to exceed five years, whichever is less. This time period may be reduced by the administrative authority if deemed necessary for the protection of human health and/or the environment.

iii. Those persons who have been issued a standard solid waste permit for a type of *surface disposal*, as defined in Subsection B of this Section, shall comply with the requirements in Subparagraph C.3.b of this Section.

b. As of June 1, 2006, facilities not addressed under Subparagraph D.1.a of this Section shall apply for a permit as follows.

i. All sanitary wastewater treatment facilities that receive domestic septage and/or portable toilet waste into their systems shall apply for a permit within 180 days of June 1, 2006.

ii. All treatment facilities that are for the sole purpose of preparing sewage sludge or sewage sludge mixed with grease that is pumped or removed from a food service facility shall apply for a permit within 180 days of June 1, 2006.

iii. All treatment facilities that prepare sewage sludge for land application, and all land applicators of biosolids who are not presently operating under an effective standard solid waste permit, shall apply for a permit within 180 days of June 1, 2006.

iv. All major sanitary wastewater treatment facilities that do not receive domestic septage and/or portable toilet waste into their systems shall apply for a permit as expeditiously as practicable, but in no case later than three years from June 1, 2006.

v. All minor sanitary wastewater treatment facilities that do not receive domestic septage and/or portable toilet waste into their systems shall apply for a permit as expeditiously as practicable, but in no case later than five years from June 1, 2006.

c. At least 180 days prior to the expiration of the permit described in Clause D.1.b.ii of this Section, the owner/operator of the facility shall submit an application for permit issuance under this Chapter if the owner/operator intends to continue operations after that date.

d. A person who prepares sewage sludge or land-applies biosolids shall use the Sewage Sludge and Biosolids Use or Disposal Permit application form. The owner/operator of a sewage sludge incinerator shall apply for a permit in accordance with LAC 33:III.Chapter 5 and

shall utilize both the Air Quality Permit Application and the Sewage Sludge and Biosolids Use or Disposal Permit application forms. The forms can be accessed through the department's website or by contacting the Office of Environmental Services.

e. Except as allowed in this Paragraph, all permits issued in accordance with these regulations shall be effective for a period not to exceed five years. The standard five-year permit period may be reduced to a period of less than five years if deemed necessary by the administrative authority for the protection of human health and/or the environment.

2. Exempt Status for Those Applying Biosolids to the Land

a. A person who applies bagged *biosolids*, as defined in Subsection B of this Section, to the land shall be exempted from obtaining a permit.

b. A person who applies bulk biosolids to the land, if the biosolids were obtained from a facility that is permitted to treat sewage sludge to an Exceptional Quality biosolids level, shall be exempted from obtaining a permit.

c. The administrative authority may exempt any other person who applies biosolids to the land from the requirement of obtaining a permit, on a case-by-case basis, after determining that human health and the environment will not be adversely affected by the application of biosolids to the land.

3. A person who prepares sewage sludge, a person who applies biosolids to the land, and the owner and/or operator of a sewage sludge incinerator who desires to maintain a permit shall obtain adequate training and certification in the processing, treatment, land application, and incineration of sewage sludge.

a. To maintain certification, a minimum of 16 contact hours of continuous education are required for each certificate held during the previous two-year certification period.

b. Classes, seminars, conferences, or conventions used for units shall be approved by the administrative authority.

4. Closure requirements for sanitary wastewater treatment facilities that were utilized for the preparation of sewage sludge, and sewage sludge disposal ponds/lagoons complying with the requirements of Subparagraph C.3.b of this Section, are as follows.

a. In closing a facility that was utilized for sanitary wastewater treatment or for the disposal of sewage sludge, the liquid portion must be removed in a manner that meets the requirements of LAC 33:IX.Chapters 23-71.

b. The use or disposal options for the closure of a facility that was utilized for the treatment of sanitary wastewater or the disposal of sewage sludge shall consist of:

i. removal and disposal of the remaining biosolids in a permitted landfill;

ii. obtaining an Exceptional Quality biosolids certification without further soil or site restrictions for the material; or

iii. obtaining approval for land application of the material as Class B biosolids with soil or site restrictions.

c. For removal and disposal in a permitted landfill, a closure plan shall be submitted to the Office of Environmental Services prior to site closure. The closure

plan shall include, but not be limited to, the following information:

i. the name, mailing address, physical address, and contact person of the facility that is proposed for closure;

ii. an aerial photograph showing the location of the facility that is proposed for closure;

iii. the amount of sewage sludge that will be removed and disposed at a permitted landfill;

iv. the name, location, and contact person at the site where the sewage sludge will be disposed; and

v. a sampling and analysis plan for the sewage sludge, which shall include:

(a) either a schematic drawing or an aerial photograph that indicates where the samples will be taken;

(b) the lab methods to be utilized;

(c) the name of the laboratory where the samples will be analyzed; and

(d) any other information the department may require.

d. Approval or disapproval of the closure plan required in Subparagraph D.4.c of this Section shall be granted by the administrative authority after receipt and review of the plan.

e. For an Exceptional Quality biosolids certification without further soil or site restrictions, a request shall be submitted to the Office of Environmental Services. The request shall include, but not be limited to, the following information.

i. A sampling and analysis plan shall be submitted to the administrative authority in accordance with Subsection I of this Section. The sewage sludge shall be sampled and analyzed in a laboratory that is certified by the state of Louisiana. The minimum sampling and analysis requirements are as follows:

(a) toxicity characteristic leaching procedure (TCLP)—one composite sample;

(b) pollutants listed in Table 1 of LAC 33:IX.7303.E—at least four separate, random, representative samples of pollutants listed in the table;

(c) pathogens—

(i) the sewage sludge shall be sampled and analyzed in accordance with the requirements in Subsection I of this Section;

(ii) results of the analysis must indicate that fecal coliform levels are 1,000 Most Probable Number per gram of total solids (dry weight basis), or the density of *Salmonella sp.* bacteria in the sewage sludge shall be less than 3 Most Probable Number per 4 grams of total solids (dry weight basis);

(iii) if the reduction of pathogens is a necessity, it shall be achieved by utilizing either Exceptional Quality Biosolids—Alternative 2, as described in LAC 33:IX.7309.C.1.d, Exceptional Quality Biosolids—Alternative 3, as described in LAC 33:IX.7309.C.1.e, Exceptional Quality Biosolids—Alternative 4, as described in LAC 33:IX.7309.C.1.f, or Exceptional Quality Biosolids—Alternative 5, as described in LAC 33:IX.7309.C.1.g;

(iv) for analysis of fecal coliform or *Salmonella sp.*, a minimum of four separate, random, representative samples shall be utilized. The geometric mean

of the separate samples collected and analyzed must be reported;

(d). vector attraction reduction—first, utilize the procedure described in LAC 33:IX.7309.D.2.d or e.ii. Proof of vector attraction reduction shall then be made by the collection and analysis of four separate, random, representative samples for the indicator parameter of the selected procedure (i.e., pH or Percent Solids). If specific sampling and analysis methods are listed in Subsection I of this Section for vector attraction reduction, then the methods listed must be used for the determination of vector attraction reduction;

(e). PCBs—one composite sample; and

(f). total nitrogen, total nitrates, total phosphorus, total potassium, and pH—one composite sample from four or more separate samples collected from the treatment facility or from each cell of an oxidation pond, lagoon, or surface impoundment.

ii. Results of the analyzed samples, along with QA/QC documentation, must be submitted to the administrative authority, along with the following additional information:

(a). the name of the facility that utilized the treatment facility;

(b). the LPDES (sanitary wastewater discharge) permit number for the treatment facility;

(c). the design capacity of the treatment facility (If the facility was an oxidation pond, include the size of the pond (in acres) and the number of cells of the pond, e.g., 1-cell, 2-cell, or 3-cell.);

(d). the approximate tons of sewage sludge to be disposed;

(e). the location of the facility, delineated on an aerial photograph;

(f). the future plans for the site where the treatment plant is located;

(g). the demographics within the area of the facility (businesses, hospitals, nursing homes, day-care centers, schools, walk-in clinics, etc.);

(h). potable water wells within a 1-mile radius of the facility, including private and public potable water wells, designated on an aerial photograph; and

(i). the name of the drinking water aquifer.

iii. After receipt and review of the results of the laboratory analysis and the additional information required in Clause D.4.e.ii of this Section, a decision shall be rendered by the administrative authority regarding Exceptional Quality biosolids certification.

f. For closure through land application of the sewage sludge as Class B biosolids, a Sewage Sludge and Biosolids Use or Disposal Permit application form must be submitted to the Office of Environmental Services utilizing the application form that can be accessed on the department's website or by contacting the Office of Environmental Services.

5. Environmental Impact Supplementary Information. In addition to the requirements of this Chapter, all Sewage Sludge and Biosolids Use or Disposal Permit application forms must include a response to each of the following:

a. a detailed discussion demonstrating that the potential and real adverse environmental effects of the

proposed facility have been avoided to the maximum extent possible;

b. a cost-benefit analysis that balances the environmental impact costs against the social and economic benefits of the facility and demonstrates that the latter outweigh the former;

c. a discussion and description of possible alternative projects that would offer more protection to the environment than the proposed facility without unduly curtailing non-environmental benefits;

d. a detailed discussion of possible alternative sites that would offer more protection to the environment than the proposed facility site without unduly curtailing non-environmental benefits; and

e. a discussion and description of mitigating measures that would offer more protection to the environment than the facility as proposed without unduly curtailing non-environmental benefits.

#### E. Sewage Sludge Disposed in a Landfill

1. A landfill where sewage sludge is disposed must possess a legal and effective permit.

2. A person who disposes of sewage sludge in a landfill shall provide the necessary information to the owner/operator of the landfill where the sewage sludge is to be disposed to assure that the landfill will be in compliance with its permit requirements.

3. The person who prepares sewage sludge that is disposed in a landfill shall provide the following to the Office of Environmental Services on an annual basis, or at a frequency designated in the permit:

a. proof that the sewage sludge is being disposed at an approved landfill, by furnishing the name, address, and permit number of the landfill; and

b. copies of all records of sampling and laboratory analyses of the sewage sludge for hazardous characteristics or the presence of PCBs, of the results of the Liquid Paint Filter Test (if required in the permit), and of any other analysis required by the owner/operator of the landfill.

#### F. Reserved.

#### G. Prohibitions, Restrictions, and Additional or More Stringent Requirements

##### 1. Use or Disposal of Sewage Sludge

a. No person shall use or dispose of sewage sludge or biosolids through any practice for which requirements have not been established in this Chapter.

b. No person shall use or dispose of sewage sludge or biosolids except in accordance with the requirements in this Chapter.

##### 2. Surface Disposal Prohibited. *Surface disposal*, as defined in Subsection B of this Section, is prohibited as a use or disposal method of sewage sludge or biosolids.

##### 3. Storage of Sewage Sludge or Biosolids

a. Except as allowed in Subparagraph G.3.b of this Section, the *storage of sewage sludge or biosolids*, as defined in Subsection B of this Section, is allowed for a period not to exceed six consecutive months when:

i. it is necessary for the upgrade, repair, or maintenance of a treatment works or sludge-only facility, or for agricultural storage purposes when the sewage sludge or biosolids are to be used for *beneficial use*, as defined in Subsection B of this Section;

ii. notification has been made by the person who wishes to store the sewage sludge or biosolids to the administrative authority; and

iii. subsequent approval by the administrative authority has been received.

b. An extension for storage for greater than six months may be granted by the administrative authority if storage for the extended period will have no adverse affect on human health or the environment.

c. A request for an extension for storage for greater than six months must be submitted in writing to the Office of Environmental Services at least 60 days prior to the expiration of the first six-month storage period and shall include, but not be limited to, the following information:

i. the name and address of the person who prepared the sewage sludge or biosolids;

ii. the name and address of the person who either owns or leases the land where the sewage sludge or biosolids are to be stored, if different from the person who prepared the sewage sludge;

iii. the location, by either street address or latitude and longitude, of the land;

iv. an explanation of why the sewage sludge or biosolids need to remain on the land;

v. an explanation of why human health and the environment will not be affected;

vi. the approximate date and length of time the sewage sludge or biosolids will be stored on the land; and

vii. the final use and disposal method after the storage period has expired.

d. The administrative authority shall make a determination as to whether or not the information submitted is complete and shall issue the determination within 30 days of having received the request.

i. If the information is deemed incomplete, the administrative authority shall issue a notice of deficiency. The commercial preparer or land applier of sewage sludge shall have 45 days, thereafter, to respond to the notice of deficiency.

ii. If the information is deemed complete, the administrative authority shall make and issue a determination to grant or deny the request for the storage of sewage sludge within 30 days after deeming the information complete.

4. Use of Ponds or Lagoons to Treat Sewage Sludge

a. The use of a pond or lagoon is allowed for the *treatment of sewage sludge*, as defined in Subsection B of this Section, only after a permit has been granted under these regulations and the applicable air and water discharge permits have been applied for and granted by the administrative authority.

b. The person who makes use of a pond or lagoon for the treatment of sewage sludge shall:

i. provide documentation to the Office of Environmental Services that indicates the final use or disposal method for the sewage sludge;

ii. apply for the appropriate permit for the chosen final use or disposal in accordance with this Chapter; and

iii. provide documentation by a qualified groundwater scientist to the Office of Environmental Services that indicates the area where the pond or lagoon is located and if it will adequately protect against potential

groundwater contamination either by natural soil conditions or by a constructed soil or synthetic liner that has a hydraulic conductivity of  $1 \times 10^{-7}$  centimeters per second or less, and adequately protect from the potential to *contaminate an aquifer*, as defined in Subsection B of this Section.

5. Solid wastes other than those listed below are prohibited from being prepared with sewage sludge and must be disposed of in the manner provided in LAC 33:VII.Subpart 1:

a. residential and commercial food waste;

b. twigs, branches, leaves, crushed or chipped wood, logs, or trees;

c. wood chips or sawdust;

d. ground or crushed cardboard boxes;

e. paper;

f. fly ash, kiln dust, or other solid waste material that has been approved by the Environmental Protection Agency for the alkaline treatment/stabilization of sewage sludge; and

g. industrial sludges that are shown to contain only the pollutants that are listed in Table 1 of LAC 33:IX.7303.E and are demonstrated to be of benefit to the soil and/or crops through soil conditioning and/or crop fertilization, or are utilized as a form of alkaline treatment/stabilization of the sewage sludge.

6. Materials prohibited from being prepared with sewage sludge are as follows:

a. hazardous waste;

b. materials listed in Table 1 of LAC 33:IX.7301.G; and

c. other material whose use has a potential to adversely affect human health or the environment, as determined by the administrative authority.

Table 1 of LAC 33:IX.7301.G	
Materials Prohibited from Preparation with Sewage Sludge	
Antifreeze	Pesticides
Automotive (lead-acid) batteries	Photographic supplies
Brake fluid	Propane cylinders
Cleaners (drain, oven, toilet)	Treated wood containing the preservatives CCA and/or PCP
Gasoline and gasoline cans	Tubes and buckets of adhesives, caulking, etc.
Herbicides	Swimming pool chemicals
Household (dry cell) batteries	Unmarked containers
Oil-based paint	Used motor oil

7. A material prepared with sewage sludge must be sampled and analyzed on an annual basis to determine if the material is nonhazardous by a hazardous waste determination in accordance with LAC 33:Part V. Results of the sampling and analysis must be submitted to the administrative authority on an annual basis.

8. Sewage sludge composting operations shall not be located on airport property unless an exemption or approval is granted by the U.S. Department of Transportation's Federal Aviation Administration. If an exemption or approval is granted by the U.S. Department of Transportation's Federal Aviation Administration to allow a sewage sludge composting operation to be located on airport property, the location restrictions in LAC 33:IX.7305.B.1.h and i for off-airport property operations shall apply.

9. The use of raw or untreated sewage sludge as daily, interim, or final cover at a municipal solid waste landfill is prohibited. The use of treated sewage sludge as daily, interim, or final cover at a municipal solid waste landfill is allowed only if the sewage sludge meets the requirements and is used in accordance with the requirements in LAC 33:IX.7303.

10. Except as exempted in LAC 33:IX.7303.M, sewage sludge mixed with grease shall be disposed of in a permitted landfill and shall not be:

- a. introduced into any part of a treatment works, including its collection system; or
- b. applied to the land.

11. On a case-by-case basis, the permitting authority may impose requirements in addition to or more stringent than the requirements in this Chapter when necessary to protect human health and the environment from any adverse effect of a pollutant in the sewage sludge.

#### H. Exclusions

##### 1. Co-Firing of Sewage Sludge

a. Except for the co-firing of sewage sludge with *auxiliary fuel*, as defined in LAC 33:IX.7311.B, this Chapter does not establish requirements for sewage sludge co-fired in an incinerator with other wastes or for the incinerator in which sewage sludge and other wastes are co-fired.

b. This Chapter does not establish requirements for sewage sludge co-fired with auxiliary fuel if the auxiliary fuel exceeds 30 percent of the dry weight of the sewage sludge and auxiliary fuel mixture.

2. Sludge Generated at an Industrial Facility. This Chapter does not establish requirements for the use or disposal of sludge generated at an industrial facility during the treatment of industrial wastewater, including sewage sludge generated during the treatment of industrial wastewater combined with domestic sewage.

3. Hazardous Sewage Sludge. This Chapter does not establish requirements for the use or disposal of sewage sludge or a material derived from sewage sludge that is hazardous in accordance with LAC 33:Part V.

4. Sewage Sludge Containing PCBs. This Chapter does not establish requirements for the use or disposal of sewage sludge containing polychlorinated biphenyls (PCBs) that are regulated by the TSCA.

5. Incinerator Ash. This Chapter does not establish requirements for the use or disposal of ash generated during the firing of sewage sludge in a sewage sludge incinerator.

6. Grit and Screenings. This Chapter does not establish requirements for the use or disposal of grit (e.g., sand, gravel, cinders, or other materials with a high specific gravity) or screenings (e.g., relatively large materials such as rags) generated during preliminary treatment of domestic sewage in a treatment works.

7. Drinking Water Treatment Sludge. This Chapter does not establish requirements for the use or disposal of sludge generated during the treatment of either surface water or groundwater used for drinking water.

8. Treatment Processes. This Chapter does not establish requirements for processes used to treat *domestic sewage*, as defined in Subsection B of this Section, or for processes used to treat sewage sludge prior to final use or disposal, except as provided in LAC 33:IX.7309.

9. Selection of a Use or Disposal Practice. This Chapter does not require the selection of a sewage sludge use or disposal practice. The determination of the manner in which sewage sludge is used or disposed is to be made by the person who prepares sewage sludge.

#### I. Sampling and Analysis

##### 1. Sampling

a. The permittee shall collect and analyze representative samples of sewage sludge or biosolids that are applied to the land and sewage sludge fired in a sewage sludge incinerator at the frequency specified in the permit.

b. The permittee shall create and maintain records of sampling and monitoring information for the period specified in the permit. The sampling and monitoring records shall include:

- i. the date, exact place, and time of sampling or measurements;
- ii. the individual(s) who performed the sampling or measurements;
- iii. the date(s) analyses were performed;
- iv. the individual(s) who performed the analysis;
- v. the analytical techniques or methods used; and
- vi. the results of such analysis.

2. Methods. The materials listed below are incorporated by reference in this Chapter. The materials are incorporated as they exist on the date of approval, and notice of any change in these materials will be published in the *Louisiana Register*. They are available for inspection at the Office of the Federal Register, 7th Floor, Suite 700, 800 North Capitol Street, NW, Washington, DC, and at the Office of Water Docket, Room L-102, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC. Copies may be obtained from the standard producer or publisher listed in the regulation. Information regarding other sources of these documents is available from the Department of Environmental Quality, Office of Environmental Services. Methods in the materials listed below (or in 40 CFR Part 136) shall be used to analyze samples of sewage sludge.

a. Enteric Viruses. ASTM Designation: D 4994-89, "Standard Practice for Recovery of Viruses From Wastewater Sludges," 1992 Annual Book of ASTM Standards: Section 11—Water and Environmental Technology, ASTM, 1916 Race Street, Philadelphia, PA 19103-1187.

b. Fecal Coliform. Part 9221 E, "Standard Methods for the Examination of Water and Wastewater," 18th Edition, 1992, American Public Health Association, 1015 15th Street, NW, Washington, DC 20005; or EPA Method 1680 (<http://www.epa.gov/waterscience/methods/biosolids/EPA.Method.1680.July2006.pdf>) for *Exceptional Quality biosolids* and Part 9221 E or Part 9222 D "Standard Methods for the Examination of Water and Wastewater," 18th Edition, 1992, American Public Health Association, 1015 15th Street, NW, Washington, DC 20005; or EPA Method 1680 or 1681 (<http://www.epa.gov/waterscience/methods/biosolids/EPA.Method.1681.July2006.pdf>) for *Class B Biosolids*.

c. Helminth Ova. Yanko, W.A., "Occurrence of Pathogens in Distribution and Marketing Municipal Sludges," EPA 600/1-87-014, 1987. National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161 (PB 88-154273/AS).

d. Inorganic Pollutants. *Test Methods for Evaluating Solid Waste, Physical/Chemical Methods*, EPA Publication SW-846, Second Edition (1982) with Updates I (April 1984) and II (April 1985) and Third Edition (November 1986) with Revision I (December 1987). Second Edition with Updates I and II are available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161 (PB-87-120-291). Third Edition with Revision I are available from Superintendent of Documents, Government Printing Office, 941 North Capitol Street, NE, Washington, DC 20002 (Document Number 955-001-00000-1).

e. *Salmonella sp.* Bacteria. Part 9260 D, "Standard Methods for the Examination of Water and Wastewater," 18th Edition, 1992, American Public Health Association, 1015 15th Street, NW, Washington, DC 20005; or EPA Method 1682 (<http://www.epa.gov/waterscience/methods/biosolids/EPA.Method.1682.July2006.pdf>); or Kenner, B.A. and H.P. Clark, "Detection and Enumeration of Salmonella and Pseudomonas Aeruginosa," *Journal of the Water Pollution Control Federation*, Vol. 46, No. 9, September 1974, pp. 2163-2171. Water Environment Federation, 601 Wythe Street, Alexandria, VA 22314.

f. Specific Oxygen Uptake Rate. Part 2710, B. Standard Methods for the Examination of Water and Wastewater, 18th Edition, 1992, American Public Health Association, 1015 15th Street, NW, Washington, DC 20005.

g. Total, Fixed, and Volatile Solids. Part 2540, G. Standard Methods for the Examination of Water and Wastewater, 18th Edition, 1992, American Public Health Association, 1015 15th Street, NW, Washington, DC 20005.

h. Incineration of Sewage Sludge—Standards of Performance and Particulate Matter. Materials and Methods at 40 CFR Part 60 as incorporated by reference at LAC 33:III.3003.

i. Incineration of Sewage Sludge—National Emission Standards for Beryllium and for Mercury. Materials, Methods, and Standards at 40 CFR Part 61 as incorporated by reference at LAC 33:III.5116.

j. Composting of Sewage Sludge. *Test Methods for the Examination of Composting and Compost*, The US Composting Council Research and Education Foundation and USDA, TMECC Website: <http://tmecc.org/tmecc/index.html>.

k. Nutrients—*Methods of Soil Analysis*, Soil Science Society of America Series (Most Recent Editions).

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HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:781 (April 2002), repromulgated LR 30:233 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2516 (October 2005), LR 33:2366 (November 2007).

### **§7303. Land Application [Formerly §6903]**

#### **A. Applicability**

1. This Section applies to:
  - a. any person who prepares sewage sludge or biosolids that are applied to the land;
  - b. any person who applies biosolids to the land;
  - c. sewage sludge or biosolids that are applied to the land; and
  - d. the land on which sewage sludge or biosolids are applied.

2. The general requirements in Subsection C of this Section, the other requirements for bulk biosolids in Subsection F of this Section, the general management practices in Subsection D of this Section, and the other management practices for bulk biosolids in Subsection G of this Section do not apply when bulk *Exceptional Quality biosolids*, as defined in LAC 33:IX.7301.B, are applied to the land and the preparer has received and maintained a permit to prepare sewage sludge as Exceptional Quality biosolids in accordance with requirements in Subsection L of this Section.

3. The administrative authority may apply any or all of the general requirements in Subsection C of this Section, the other requirements for bulk biosolids in Subsection F of this Section, the general management practices in Subsection D of this Section, and the other management practices for bulk biosolids in Subsection G of this Section to the bulk biosolids in Paragraph A.2 of this Section on a case-by-case basis after determining that any or all of the requirements or management practices are needed to protect human health and the environment from any reasonably anticipated adverse effect that may occur from the application of the bulk biosolids to the land.

4. The general requirements in Subsection C of this Section and the general management practices in Subsection D of this Section do not apply if the biosolids sold or given away in a bag or other container are *Exceptional Quality biosolids*, as defined in LAC 33:IX.7301.B, and the preparer has received and maintained a permit to prepare sewage sludge as Exceptional Quality biosolids in accordance with the requirements in Subsection L of this Section.

5. The administrative authority may apply any or all of the general requirements in Subsection C of this Section and the general management practices in Subsection D of this Section to the biosolids in Paragraph A.4 of this Section on a case-by-case basis after determining that the requirements or the management practices are needed to protect human health and the environment from any reasonably anticipated adverse effect that may occur from the application of the biosolids to the land.

#### **B. Special Definitions**

*Agricultural Land*—land on which a food crop, a feed crop, or a fiber crop is grown. This includes range land and land used as pasture.

#### *Agronomic Rate*—

a. the whole biosolids application rate (dry weight basis) designed:

i. to provide the amount of nitrogen needed by the food crop, feed crop, fiber crop, cover crop, or vegetation grown on the land; and

ii. to minimize the amount of nitrogen in the biosolids that are not utilized by the crop or vegetation grown on the land and either passes below the root zone to the groundwater or gets into surface waters during storm events;

b. agronomic rate may be extended to include phosphorus to application sites that are located within the drainage basin of water bodies that have been determined by the administrative authority to be impaired by phosphorus.

*Annual Pollutant Loading Rate*—the maximum amount of a pollutant that can be applied to a unit area of land during a 365-day period.

*Annual Whole Biosolids Application Rate*—the maximum amount of biosolids (dry weight basis) that can be applied to a unit area of land during a 365-day period.

*Annual Whole Sludge Application Rate*—repealed.

*Cumulative Pollutant Loading Rate*—the maximum amount of an inorganic pollutant that can be applied to an area of land.

*Forest*—a tract of land thick with trees and underbrush.

*Monthly Average*—the arithmetic mean of all measurements taken during the month.

*Pasture*—land on which animals feed directly on feed crops such as legumes, grasses, grain stubble, or stover.

*Public Contact Site*—land with a high potential for contact by the public. This includes, but is not limited to, public parks, ball fields, cemeteries, plant nurseries, turf farms, and golf courses.

*Range Land*—open land with indigenous vegetation.

*Reclamation Site*—drastically disturbed land that is reclaimed using biosolids. This includes, but is not limited to, strip mines and construction sites.

### C. General Requirements

1. When a person who prepares sewage sludge provides the sewage sludge to another person who prepares the sewage sludge, the person who receives the sewage sludge shall comply with the requirements in this Chapter.

2. The person who provides the sewage sludge shall provide the person who receives the sewage sludge with the following information:

a. the name, mailing address, and location of the facility or facilities of the person providing the sewage sludge;

b. the total dry metric tons being provided per 365-day period; and

c. a description of any treatment processes occurring at the providing facility or facilities, including blending, composting, or mixing activities and the treatment to reduce pathogens and/or vector attraction reduction.

3. No person shall apply biosolids to the land except in accordance with the requirements in this Chapter.

4. Biosolids shall not be applied to the land until the site has been approved by the administrative authority with a finding that the land application site is a legitimate beneficial use site.

### D. General Management Practices

#### 1. Land Application Restrictions

a. Biosolids applied to agricultural land, forest, a public contact site, or a reclamation site shall only be applied at a whole biosolids application rate that is equal to or less than the agronomic rate for the biosolids, unless, in the case of a reclamation site, otherwise specified by the permitting authority.

b. Biosolids shall be applied to the land in accordance with the slope requirements in Table 1 of LAC 33:IX.7303.D.

c. Biosolids having a concentration of PCBs equal to or greater than 10 mg/kg of total solids (dry wt.) must be incorporated into the soil regardless of slope.

2. Buffer Zones. When biosolids are applied to agricultural land, forest, or a reclamation site, buffer zones shall be established as follows for each application area, unless otherwise specified by the administrative authority.

a. For all sites, the following buffer zone requirements apply:

i. a private potable water supply well—300 feet, unless special permission is granted by the private potable water supply owner;

ii. a public potable water supply well, surface water intake, treatment plant, or public potable water supply elevated or ground storage tank—300 feet, unless special permission is granted by the Department of Health and Hospitals; and

iii. a property boundary—100 feet, unless special permission is granted by the property owner(s).

b. For new or first-time-permitted sites, the following buffer zone requirements apply:

i. an established *institution*, as defined in LAC 33:IX.7301.B—1,000 feet, unless special permission is granted by the responsible official of the established institution. The permission must be in the form of a notarized affidavit executed by the owner waiving the 1,000-foot buffer zone. However, in no case shall the application area be located less than 200 feet from an institution; and

ii. an occupied residential home or structure—500 feet, unless special permission is granted by the owner and/or lessee of the occupied residential home or structure. The permission must be in the form of a notarized affidavit executed by the owner and/or lessee waiving the 500-foot buffer zone. However, in no case shall land application of sewage sludge be conducted less than 200 feet from the occupied residential home or structure.

3. Water Table Levels. Biosolids shall not be applied to agricultural land, forest, or a reclamation site during the months when the water table is less than or at 2 feet below the soil surface as indicated in the Parish Soil Surveys or the Water Features Data published by the Natural Resources Conservation Service (NRCS); or some form of monitoring device shall be provided to ensure that the annual high water table is greater than 2 feet below the soil surface.

4. Nutrient Management Plan and Soil Sampling. The person who applies biosolids to agricultural or forest land shall:

a. provide proof to the administrative authority that a full nutrient management plan has been developed for the agricultural or forest land where the biosolids are applied. The full nutrient management plan shall be developed by the Natural Resource Conservation Service, a certified soil scientist, a certified crop advisor, or a local LSU Agricultural Center Cooperative Extension Service agent; or

b. sample the soil at the site or sites where biosolids are land-applied on an annual basis, or, if double cropping is practiced, prior to the planting of each crop, for the following parameters:

i. total Kjeldahl nitrogen;

ii. total nitrates;

iii. total nitrites;

iv. total phosphorus;

v. total potassium; and

vi. pH.

5. Biosolids Sold or Given Away in a Bag or Other Container

a. Biosolids sold or given away in a bag or other container shall not be applied to the land at a rate that would

cause any of the annual pollutant loading rates in Table 4 of LAC 33:IX.7303.E to be exceeded.

b. The permittee shall either affix a label to the bag or other container holding biosolids that are sold or given away for application to the land, or provide an information sheet to the person who receives biosolids sold or given away in a bag or other container for application to the land. The label or information sheet shall contain the following information:

- i. the information required in Clauses L.1.f.i-viii of this Section; and
- ii. the annual whole biosolids application rate that does not cause any of the annual pollutant loading rates in Table 4 of LAC 33:IX.7303.E to be exceeded.

Table 1 of LAC 33:IX.7303.D	
Slope Limitations for Land Application of Biosolids	
Slope Percent	Application Restriction
0-3	None, except drainage to prevent standing water shall be provided.
3-6	A 100-foot vegetated runoff area should be provided at the down slope end of the application area if a liquid is applied. Measures should be taken to prevent erosion.
6-12	Liquid material must be injected into the soil. Solid material must be incorporated into the soil if the site is not covered with vegetation. A 100-foot vegetated runoff area is required at the down slope end of the application area for all applications. Measures must be taken to prevent erosion. Terracing may be required if deemed a necessity by the administrative authority to prevent runoff from the land application site and erosion.
>12	Unsuitable for application unless terraces are constructed and a 200-foot vegetated buffer area with a slope of less than 3 percent is provided at the down slope edge of the application area and the material is incorporated (solid material) and injected (liquid material) into the soil. Measures must be taken to prevent runoff from the land application site and to prevent erosion.

### E. Pollutant Limits

#### 1. Sewage Sludge and Biosolids

a. Bulk biosolids or biosolids sold or given away in a bag or other container shall not be applied to the land if the concentration of any pollutant in the biosolids exceeds the ceiling concentration for the pollutant in Table 1 of LAC 33:IX.7303.E.

b. If bulk biosolids are applied to agricultural land, forest, a public contact site, or a reclamation site, either:

i. the cumulative loading rate for each pollutant in the biosolids shall not exceed the cumulative pollutant loading rate for the pollutant in Table 2 of LAC 33:IX.7303.E; or

ii. the concentration of each pollutant in the biosolids shall not exceed the concentration for the pollutant in Table 3 of LAC 33:IX.7303.E.

c. If biosolids are applied to a lawn or a home garden, the concentration of each pollutant in the biosolids shall not exceed the ceiling concentrations in Table 1 of LAC 33:IX.7303.E and the pollutant concentrations for each pollutant listed in Table 3 of LAC 33:IX.7303.E, and the

concentration of PCBs must be less than 10 mg/kg of total solids (dry wt.).

d. If biosolids are sold or given away in a bag or other container for application to the land, either:

i. the concentration of each pollutant in the biosolids shall not exceed the ceiling concentration for the pollutant in Table 1 of LAC 33:IX.7303.E and the concentration for the pollutant in Table 3 of LAC 33:IX.7303.E, and the concentration of PCBs must be less than 10 mg/kg of total solids (dry wt.); or

ii. the product of the concentration of each pollutant in the biosolids and the annual whole biosolids application rate for the sewage sludge shall not cause the annual pollutant loading rate for the pollutant in Table 4 of LAC 33:IX.7303.E to be exceeded, and the concentration of PCBs must be less than 10 mg/kg of total solids (dry wt.). The procedure used to determine the annual whole biosolids application rate is presented in LAC 33:IX.7397.Appendix K.

e. The administrative authority may require that the biosolids meet more stringent pollutant limits or limits for additional pollutants than those listed in the Tables of LAC 33:IX.7303.E on a case-by-case basis after determining that the more stringent pollutant limits or limits for additional pollutants are needed to protect human health and the environment from any reasonably anticipated adverse effect that may occur from the application of the biosolids to the land.

### 2. Pollutant Concentrations and Loading Rates—Biosolids

#### a. Ceiling Concentrations

Table 1 of LAC 33:IX.7303.E	
Ceiling Concentrations	
Pollutant	Ceiling Concentration (milligrams per kilogram) <sup>1</sup>
Arsenic	75
Cadmium	85
Copper	4300
Lead	840
Mercury	57
Molybdenum	75
Nickel	420
Selenium	100
Zinc	7500
<sup>1</sup> Dry weight basis	

#### b. Cumulative Pollutant Loading Rates

Table 2 of LAC 33:IX.7303.E	
Cumulative Pollutant Loading Rates	
Pollutant	Cumulative Pollutant Loading Rate (kilograms per hectare)
Arsenic	41
Cadmium	39
Copper	1500
Lead	300
Mercury	17
Nickel	420
Selenium	100
Zinc	2800

c. Pollutant Concentrations

Table 3 of LAC 33:IX.7303.E	
Pollutant Concentrations	
Pollutant	Monthly Average Concentration (milligrams per kilogram) <sup>1</sup>
Arsenic	41
Cadmium	39
Copper	1500
Lead	300
Mercury	17
Nickel	420
Selenium	100
Zinc	2800
<sup>1</sup> Dry weight basis	

d. Annual Pollutant Loading Rates

Table 4 of LAC 33:IX.7303.E	
Annual Pollutant Loading Rates	
Pollutant	Annual Pollutant Loading Rate (kilograms per hectare per 365-day period)
Arsenic	2.0
Cadmium	1.9
Copper	75
Lead	15
Mercury	0.85
Nickel	21
Selenium	5.0
Zinc	140

F. Other Requirements for Bulk Biosolids

1. The person who prepares bulk sewage sludge that is applied to agricultural land, forest, a public contact site, or a reclamation site shall provide the person who applies the bulk biosolids with written notification of the concentration, on a dry weight basis, of total nitrogen, ammonia (as N), nitrates, potassium, and phosphorus in the bulk biosolids.

2. When a person who prepares bulk sewage sludge provides the bulk biosolids to a person who applies the bulk biosolids to the land, the person who prepares the bulk sewage sludge shall provide the person who applies the bulk biosolids with notice and necessary information to comply with the requirements in this Chapter.

3. The person who applies bulk biosolids to the land shall provide the owner or leaseholder of the land on which the bulk biosolids are applied with notice and necessary information to comply with the requirements in this Chapter.

4. No person shall apply bulk biosolids subject to the cumulative pollutant loading rates in Table 2 of LAC 33:IX.7303.E to the land without first contacting the administrative authority to determine if bulk biosolids subject to the cumulative pollutant loading rates in Table 2 of LAC 33:IX.7303.E have been applied to the land since July 20, 1993.

5. No person shall apply bulk biosolids subject to the cumulative pollutant loading rates in Table 2 of LAC 33:IX.7303.E to agricultural land, forest, a public contact site, or a reclamation site if any of the cumulative pollutant loading rates in Table 2 of LAC 33:IX.7303.E has been reached.

6. If bulk biosolids have not been applied to a site since July 20, 1993, the cumulative amount for each pollutant listed in Table 2 of LAC 33:IX.7303.E may be

applied to the site in accordance with Clause E.1.b.i of this Section.

7. If bulk biosolids have been applied to the site since July 20, 1993, and the cumulative amount of each pollutant applied to the site in the bulk biosolids since that date is known, the cumulative amount of each pollutant applied to the site shall be used to determine the additional amount of each pollutant that can be applied to the site in accordance with Clause E.1.b.i of this Section.

8. If bulk biosolids have been applied to the site since July 20, 1993, and the cumulative amount of each pollutant applied to the site in the bulk biosolids since that date is not known, an additional amount of each pollutant shall not be applied to the site in accordance with Clause E.1.b.i of this Section.

G. Other Management Practices for Bulk Biosolids

1. Bulk biosolids shall not be applied to the land if it is likely to adversely affect a threatened or endangered species listed under Section 4 of the Endangered Species Act or its designated critical habitat.

2. Bulk biosolids shall not be applied to agricultural land, forest, a public contact site, or a reclamation site that is flooded, frozen, or snow-covered so that the bulk biosolids enter a *wetland* or other *waters of the state*, as defined in LAC 33:IX.2313, except as provided in a permit issued in accordance with Section 402 or 404 of the CWA or LAC 33:IX.Chapters 23-71.

3. Bulk biosolids shall not be applied to agricultural land, forest, or a reclamation site that is 33 feet (10 meters) or less from any *waters of the state*, as defined in LAC 33:IX.2313, unless otherwise specified by the permitting authority.

4. Bulk biosolids shall not be applied to the land if it would affect a property that either is listed on, or is eligible for listing on, the National Historic Register.

H. Operational Standards—Pathogens and Vector Attraction Reduction

1. Pathogens

a. The Exceptional Quality biosolids pathogen requirements in LAC 33:IX.7309.C.1 or the Class B pathogen requirements and site restrictions in LAC 33:IX.7309.C.2 shall be met when bulk biosolids are applied to agricultural land, forest, a public contact site, or a reclamation site.

b. The Exceptional Quality biosolids pathogen requirements in LAC 33:IX.7309.C.1 shall be met when biosolids are applied to a lawn or a home garden.

c. The Exceptional Quality biosolids pathogen requirements in LAC 33:IX.7309.C.1 shall be met when biosolids are sold or given away in a bag or other container for application to the land.

2. Vector Attraction Reduction

a. One of the vector attraction reduction requirements in LAC 33:IX.7309.D.2.a-g shall be met when bulk biosolids are applied to agricultural land, forest, a public contact site, or a reclamation site.

b. One of the vector attraction reduction requirements in LAC 33:IX.7309.D.2.a-e shall be met when biosolids are applied to a lawn or a home garden.

c. One of the vector attraction reduction requirements in LAC 33:IX.7309.D.2.a-e shall be met when

biosolids are sold or given away in a bag or other container for application to the land.

I. Frequency of Monitoring

1. The frequency of monitoring for the pollutants listed in Table 1, Table 2, Table 3, and Table 4 of LAC 33:IX.7303.E; the frequency of monitoring for pathogen density requirements in LAC 33:IX.7309.C.1 and 2.b; and the frequency of monitoring for vector attraction reduction requirements in LAC 33:IX.7309.D.2.a-e shall be the frequency specified in Table 1 of LAC 33:IX.7303.I.

Table 1 of LAC 33:IX.7303.I	
Frequency of Monitoring—Land Application	
Amount of Biosolids <sup>1</sup> (metric tons per 365-day period)	Frequency
Greater than zero but less than 290	Once per year
Equal to or greater than 290 but less than 1,500	Once per quarter (four times per year)
Equal to or greater than 1,500 but less than 15,000	Once per 60 days (six times per year)
Equal to or greater than 15,000	Once per month (12 times per year)
<sup>1</sup> Either the amount of bulk biosolids applied to the land (on a dry weight basis) or the amount of biosolids that are bagged and sold or given away for application to the land (on a dry weight basis).	

2. After the biosolids have been monitored for two years at the frequency in Table 1 of LAC 33:IX.7303.I, the permitting authority may reduce the frequency of monitoring for pollutant concentrations and for the pathogen density requirements in LAC 33:IX.7309.C.1.e.ii and iii.

J. Recordkeeping

1. All *Class I sludge management facilities*, as defined in LAC 33:IX.7301.B, that prepare sewage sludge shall keep a record of the annual production of sewage sludge (i.e., dry ton or dry metric tons) and of the sewage sludge management practice used and retain such record for a period of five years.

2. Additional Recordkeeping

a. The recordkeeping requirements for the person who prepares the sewage sludge or biosolids that are land applied and meet the criteria in Paragraphs A.2 and 4 of this Section are those indicated in Paragraph L.9 of this Section.

b. For bulk biosolids that are applied to agricultural land, forest, a public contact site, or a reclamation site and that meet the pollutant concentrations in Table 3 of LAC 33:IX.7303.E, the Exceptional Quality biosolids pathogen requirements in LAC 33:IX.7309.C.1, and the vector attraction reduction requirements in either LAC 33:IX.7309.D.2.f or g:

i. the person who prepares the bulk biosolids shall develop the following information and shall retain the information for five years:

(a). the concentration of each pollutant listed in Table 3 of LAC 33:IX.7303.E;

(b). a description of how the Exceptional Quality biosolids pathogen requirements in LAC 33:IX.7309.C.1 are met; and

(c). the following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the Exceptional Quality biosolids pathogen requirements in LAC 33:IX.7309.C.1 was prepared under my direction and supervision in accordance with the system as described in the permit application, designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are

significant penalties for false certification including the possibility of fine and imprisonment."; and

ii. the person who applies the bulk biosolids to the land shall develop the following information and shall retain the information for five years:

(a). a description of how the general management practices in Paragraphs D.1-4 of this Section and the other management practices for bulk biosolids in Subsection G of this Section are met for each site on which bulk biosolids are applied;

(b). a description of how the vector attraction reduction requirements in either LAC 33:IX.7309.D.2.f or g are met for each site on which bulk biosolids are applied; and

(c). the following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the general management practices in LAC 33:IX.7303.D.1-4, the other management practices for bulk biosolids in LAC 33:IX.7303.G, and the vector attraction reduction requirement in [insert either LAC 33:IX.7309.D.2.f or g] was prepared under my direction and supervision in accordance with the system as described in the permit application, designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."

c. For bulk biosolids that are applied to agricultural land, forest, a public contact site, or a reclamation site and that meet the pollutant concentrations in Table 3 of LAC 33:IX.7303.E, the Class B pathogen requirements in LAC 33:IX.7309.C.2, and the vector attraction reduction requirements in LAC 33:IX.7309.D.2.a-g:

i. the person who prepares the bulk biosolids shall develop the following information and shall retain the information for five years:

(a). the concentration of each pollutant listed in Table 3 of LAC 33:IX.7303.E;

(b). a description of how the Class B pathogen requirements in LAC 33:IX.7309.C.2 are met;

(c). a description of how one of the vector attraction reduction requirements in LAC 33:IX.7309.D.2.a-g is met; and

(d). the following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the Class B pathogen requirements in LAC 33:IX.7309.C.2 and the vector attraction reduction requirement in [insert one of the vector attraction reduction requirements in LAC 33:IX.7309.D.2.a-g] was prepared under my direction and supervision in accordance with the system as described in the permit application, designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."; and

ii. the person who applies the bulk biosolids to the land shall develop the following information and shall retain the information for five years:

(a). a description of how the general management practices in Paragraphs D.1-4 of this Section and the other management practices for bulk biosolids in Subsection G of this Section are met for each land site on which bulk biosolids are applied;

(b). a description of how the site restrictions in LAC 33:IX.7309.C.2.e are met for each land site on which bulk biosolids are applied;

(c). when the vector attraction reduction requirement in either LAC 33:IX.7309.D.2.f or g is met, a description of how the requirement is met;

(d). the date bulk biosolids are applied to each site; and

(e). the following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the general management practices in LAC 33:IX.7303.D.1-4, the other management practices for bulk biosolids in LAC 33:IX.7303.G, the site restrictions in LAC 33:IX.7309.C.2.e, and the vector attraction reduction requirement in [insert either LAC 33:IX.7309.D.2.f or g] was prepared for each site on which bulk biosolids are applied under my direction and supervision in accordance with the system as described in the permit application, designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."

d. For bulk biosolids applied to the land that is agricultural land, forest, a public contact site, or a reclamation site whose cumulative loading rate for each pollutant does not exceed the cumulative pollutant loading rate for each pollutant in Table 2 of LAC 33:IX.7303.E and that meet the Exceptional Quality biosolids or Class B pathogen requirements in LAC 33:IX.7309.C, and the vector attraction reduction requirements in LAC 33:IX.7309.D.2.a-g:

i. the person who prepares the bulk biosolids shall develop the following information and shall retain the information for five years:

(a). the concentration of each pollutant listed in Table 1 of LAC 33:IX.7303.E in the bulk biosolids;

(b). a description of how the Exceptional Quality biosolids or Class B pathogen requirements in LAC 33:IX.7309.C are met;

(c). a description of how one of the vector attraction reduction requirements in LAC 33:IX.7309.D.2.a-g is met; and

(d). the following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the pathogen requirements in [insert either LAC 33:IX.7309.C.1 or 2] and the vector attraction reduction requirement in [insert one of the vector attraction reduction requirements in LAC 33:IX.7309.D.2.a-g] was prepared under my direction and supervision in accordance with the system as described in the permit application, designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."; and

ii. the person who applies the bulk biosolids to the land shall develop the following information, retain the information in Subclauses J.2.d.ii.(a)-(g) of this Section indefinitely, and retain the information in Subclauses J.2.d.ii.(h)-(m) of this Section for five years:

(a). the location, by either street address or latitude and longitude, of each land site on which bulk biosolids are applied;

(b). the number of hectares or acres in each site on which bulk biosolids are applied;

(c). the date bulk biosolids are applied to each land site;

(d). the cumulative amount of each pollutant (i.e., kilograms) listed in Table 2 of LAC 33:IX.7303.E in the bulk biosolids applied to each land site, including the amount in Paragraph F.7 of this Section;

(e). the amount of biosolids (i.e., tons or metric tons) applied to each land site;

(f). a description of how the information was obtained in order to comply with Subsection F of this Section;

(g). the following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the requirements in LAC 33:IX.7303.F was prepared for each land site on which bulk biosolids were applied under my direction and supervision in accordance with the system as described in the permit application, designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.";

(h). a description of how the general management practices in Paragraphs D.1-4 of this Section and the other management practices for bulk biosolids in Subsection G of this Section are met for each land site on which bulk biosolids are applied;

(i). the following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the general management practices in LAC 33:IX.7303.D.1-4 and the other management practices for bulk biosolids in LAC 33:IX.7303.G was prepared for each land site on which bulk biosolids were applied under my direction and supervision in accordance with the system as described in the permit application, designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.";

(j). a description of how the site restrictions in LAC 33:IX.7309.C.2.e are met for each land site on which Class B bulk biosolids are applied;

(k). the following certification statement when the bulk biosolids meet the Class B pathogen requirements in LAC 33:IX.7309.C.2:

"I certify, under penalty of law, that the information that will be used to determine compliance with the site restrictions in LAC 33:IX.7309.C.2.e for each land site on which Class B biosolids were applied was prepared under my direction and supervision in accordance with the system as described in the permit application, designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.";

(l). if the vector attraction reduction requirements in either LAC 33:IX.7309.D.2.f or g are met, a description of how the requirements are met; and

(m). the following certification statement when the vector attraction reduction requirement in either LAC 33:IX.7309.D.2.f or g is met:

"I certify, under penalty of law, that the information that will be used to determine compliance with the vector attraction reduction requirement in [insert either LAC 33:IX.7309.D.2.f or g] was prepared under my direction and supervision in accordance with the system as described in the permit application, designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."

e. For biosolids sold or given away in a bag or other container for application to the land meeting the requirement at Clause E.1.d.ii of this Section, the Exceptional Quality biosolids pathogen requirements at LAC 33:IX.7309.C.1, and the vector attraction reduction requirements in LAC 33:IX.7309.D.2.a-e:

i. the person who prepares the biosolids that are sold or given away in a bag or other container shall develop

the following information and shall retain the information for five years:

(a). the annual whole biosolids application rate for the biosolids that does not cause the annual pollutant loading rates in Table 4 of LAC 33:IX.7303.E to be exceeded;

(b). the concentration of each pollutant listed in Table 4 of LAC 33:IX.7303.E in the biosolids;

(c). a description of how the Exceptional Quality biosolids pathogen requirements in LAC 33:IX.7309.C.1 are met;

(d). a description of how one of the vector attraction reduction requirements in LAC 33:IX.7309.D.2.a-e is met;

(e). a description of how the general management practice in Subparagraph D.5.b of this Section was met; and

(f). the following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the general management practice in LAC 33:IX.7303.D.5.b, the Exceptional Quality biosolids pathogen requirements in LAC 33:IX.7309.C.1, and the vector attraction reduction requirement in [insert one of the vector attraction reduction requirements in LAC 33:IX.7309.D.2.a-e] was prepared under my direction and supervision in accordance with the system as described in the permit application, designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."; and

ii. the person who applies the biosolids that are given away or sold in a bag or other container to the land that is agricultural land, forest, a public contact site, or a reclamation area shall develop the following information and shall retain the information for five years:

(a). a description of how the general management practices in Paragraphs D.1-4 and Subparagraph D.5.a of this Section are met for each site on which the biosolids given away or sold in a bag or other container are applied; and

(b). the following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the general management practices in LAC 33:IX.7303.D.1-4 and D.5.a was prepared for each site on which biosolids given away or sold in a bag or other container are applied under my direction and supervision in accordance with the system as described in the permit application, designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including fine and imprisonment."

**K. Reporting**

1. All *Class I sludge management facilities*, as defined in LAC 33:IX.7301.B, that prepare sewage sludge shall submit the information in Paragraph J.1 of this Section to the administrative authority on February 19 of each year.

**2. Additional Reporting Requirements**

a. Reporting requirements for a person who prepares *Exceptional Quality biosolids*, as defined in LAC 33:IX.7301.B, from sewage sludge, having a permit to do so, are as indicated in Paragraph L.10 of this Section.

b. All other *Class I sludge management facilities*, as defined in LAC 33:IX.7301.B, that apply bulk biosolids to the land and are required to obtain a permit under LAC 33:IX.7301.D, shall submit the information in Paragraph J.2

of this Section, for the appropriate requirements, to the administrative authority as follows.

i. For facilities having a frequency of monitoring in Table 1 of LAC 33:IX.7303.I of once per year, the reporting period and the report due date shall be as specified in Table 1 of LAC 33:IX.7303.K.

Table 1 of LAC 33:IX.7303.K	
Reporting—Land Application	
Monitoring Period (Once per Year)	Report Due Date
January - December	February 28

ii. For facilities having a frequency of monitoring in Table 1 of LAC 33:IX.7303.I of once per quarter (four times per year), the reporting period and the report due date shall be as specified in Table 2 of LAC 33:IX.7303.K.

Table 2 of LAC 33:IX.7303.K	
Reporting—Land Application	
Monitoring Period <sup>1</sup> (Once per Quarter)	Report Due Date
January, February, March	August 28
April, May, June	
July, August, September	February 28
October, November, December	

<sup>1</sup>Separate reports must be submitted for each monitoring period.

iii. For facilities having a frequency of monitoring in Table 1 of LAC 33:IX.7303.I of once per 60 days (six times per year), the reporting period and the report due date shall be as specified in Table 3 of LAC 33:IX.7303.K.

Table 3 of LAC 33:IX.7303.K	
Reporting—Land Application	
Monitoring Period <sup>1</sup> (Once per 60 Days)	Report Due Date
January, February	June 28
March, April	
May, June	October 28
July, August	
September, October	February 28
November, December	

<sup>1</sup>Separate reports must be submitted for each monitoring period.

iv. For facilities having a frequency of monitoring in Table 1 of LAC 33:IX.7303.I of once per month (12 times per year), the reporting period and the report due date shall be as specified in Table 4 of LAC 33:IX.7303.K.

Table 4 of LAC 33:IX.7303.K	
Reporting—Land Application	
Monitoring Period <sup>1</sup> (Once per Month)	Report Due Date
January	May 28
February	
March	
April	August 28
May	
June	
July	November 28
August	
September	
October	February 28
November	
December	

<sup>1</sup>Separate reports must be submitted for each monitoring period.

3. The administrative authority may require any facility indicated in Subparagraph K.2.a of this Section to report any or all of the information required in Subparagraph K.2.b of this Section if deemed necessary for the protection of human health or the environment.

**L. Requirements for Persons Who Prepare Sewage Sludge as Exceptional Quality Biosolids**

1. A person who prepares sewage sludge as Exceptional Quality biosolids must prepare the sewage sludge in a manner that will assure that the sewage sludge meets all of the requirements of *Exceptional Quality biosolids*, as defined in LAC 33:IX.7301.B, and shall forward to the administrative authority a Sewage Sludge and Biosolids Use or Disposal Permit application form having the following information:

- a. the laboratory analysis of the metals in Tables 1 and 3 of LAC 33:IX.7303.E;
- b. the laboratory analysis for percent dry solids, percent ammonia nitrogen, percent nitrate-nitrite, percent total Kjeldahl nitrogen, percent organic nitrogen, percent phosphorus, percent potassium, percent organic matter, and pH if the sewage sludge or biosolids underwent or was subjected to any type of alkaline stabilization and/or alkaline treatment;
- c. the laboratory results for polychlorinated biphenyls (PCBs);
- d. the Exceptional Quality biosolids pathogen requirement in LAC 33:IX.7309.C.1 that will be utilized;
- e. the vector attraction reduction requirement in LAC 33:IX.7309.D.2.a-e that will be utilized; and
- f. an example of the label or information sheet that will accompany biosolids that are sold or given away either in bulk or in a bag, containing the following information:
  - i. the name and address of the preparer;
  - ii. the concentration (by volume) of each metal in Table 3 of LAC 33:IX.7303.E;
  - iii. total nitrogen;
  - iv. percent ammonia (as N);
  - v. percent phosphorus;
  - vi. pH;
  - vii. the concentration of PCBs in mg/kg of total solids (dry wt.); and
  - viii. application instructions and a statement that application of the biosolids to the land is prohibited except in accordance with the instructions on the label or information sheet.

2. The administrative authority may require that the biosolids meet more stringent pollutant limits, or limits for additional pollutants than those listed in Subparagraphs L.1.a-e of this Section, on a case-by-case basis after determining that the more stringent pollutant limits or limits for additional pollutants are needed to protect human health and the environment from any reasonably-anticipated adverse effect that may occur from the application of the biosolids to the land.

3. Samples required to be collected in accordance with Subparagraphs L.1.a-c of this Section shall be from at least four representative samplings of the biosolids taken at least 60 days apart within the 12 months prior to the date of the submittal of the Sewage Sludge and Biosolids Use or Disposal Permit application form.

4. All permits issued to persons who prepare sewage sludge as Exceptional Quality biosolids shall have a term of not more than five years.

5. For the term of the permit, the preparer of the biosolids shall conduct continued sampling at a frequency of monitoring of once per quarter. The samples shall be analyzed for the parameters specified in Subparagraphs L.1.a-c of this Section, and for the pathogen and vector attraction reduction requirements in Subparagraphs L.1.d and e, as required by LAC 33:IX.7309.

6. If results of the sampling indicate that the biosolids are no longer *Exceptional Quality biosolids*, as defined in LAC 33:IX.7301.B, then the preparer must cease any land application of the biosolids as Exceptional Quality biosolids.

7. If biosolids that are no longer Exceptional Quality biosolids are used or disposed, the exemption for Exceptional Quality biosolids no longer applies, and the biosolids must meet all the requirements and restrictions of this Chapter that apply to biosolids that are no longer Exceptional Quality biosolids.

8. Biosolids shall not be applied to the land as Exceptional Quality biosolids until the sample analyses have shown that the biosolids meet the criteria for *Exceptional Quality biosolids*, as defined in LAC 33:IX.7301.B.

9. The person who prepares the biosolids shall develop the following information and shall retain the information for five years:

- a. the results of the sample analysis required in Paragraph L.5 of this Section; and
- b. the following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the Exceptional Quality biosolids pathogen requirements in LAC 33:IX.7309.C.1 and the vector attraction reduction requirement in [insert one of the vector attraction reduction requirements in LAC 33:IX.7309.D.2.a-e] was prepared under my direction and supervision in accordance with the system as described in the permit application, designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."

10. The person who prepares Exceptional Quality biosolids shall forward the information required in Paragraph L.9 of this Section to the administrative authority on a quarterly basis. The schedule for quarterly submission is contained in the following table.

Schedule for Quarterly Submission	
Monitoring Period	DMR Due Date
January, February, March	May 28
April, May, June	August 28
July, August, September	November 28
October, November, December	February 28

M. Any person subject to these regulations who prepares sewage sludge may petition the administrative authority to allow the land application of sewage sludge that is mixed with grease that was pumped or removed from a food service facility.

1. The administrative authority may grant temporary approval, for a period not to exceed one year, for the land application of sewage sludge that is mixed with grease that was pumped or removed from a food service facility, along with the appropriate monitoring, sampling and analysis,

recordkeeping, and reporting requirements, when petitions for such are deemed appropriate after consideration of the factors enumerated in Paragraph M.2 of this Section as well as any other pertinent factors.

2. Each petition for the allowance of land application of sewage sludge that is mixed with grease that was pumped or removed from a food service facility shall:

a. be submitted in writing to the administrative authority;

b. be accompanied by evidence of public notice in the state journal and in the local journal; and

c. contain the following information:

i. documentation to prove that the preparation or treatment process will be the composting process to further reduce pathogens described in LAC 33:IX.7399.Appendix L;

ii. documentation to prove that the facility owner/operator has successfully completed a department-approved composting facility operator training course; and

iii. documentation to satisfy the requirements in Subsection L of this Section and LAC 33:IX.7305 and 7307.

3. If the owner/operator wishes to continue operation of the compost facility, he or she shall submit to the administrative authority a completed Sewage Sludge and Biosolids Use or Disposal Permit application form at least 180 days prior to the expiration date of the approval. The decision to grant or deny a permit for continuation of the compost operation shall be based on the information provided in the permit application, the monitoring and sampling and analysis results submitted during the one-year approval period, and any comments or other information received during the standard permit public notice period.

N. Procedure for the Addition or Removal of Land Application Sites

1. If a person who possesses a Sewage Sludge and Biosolids Use or Disposal Permit wishes to add a land application site or sites to the permit, the person shall submit a request package to the administrative authority containing the following information:

a. evidence of notification of the landowners bordering the proposed land application site or sites. The notification shall be in the form of a public notice placed in the local newspaper being circulated in the area of the proposed site or sites, certified letters of notification that were either hand delivered or mailed to the landowners bordering the proposed site or sites, or signed agreements of the landowners bordering the proposed site or sites to application of biosolids to the site or sites;

b. signed agreement(s) to the application of biosolids from the landowner(s) of the proposed site or sites; and

c. a completed Sewage Sludge and Biosolids Use or Disposal Permit application form.

2. If a person who possesses a Sewage Sludge and Biosolids Use or Disposal Permit wishes to remove a land application site or sites from the permit, the person shall submit a request package to the administrative authority at least 90 days prior to the removal of the site or sites containing the following information:

a. aerial photographs showing the location of the land application site or sites that are being proposed to be removed;

b. certification that all biosolids that were stored at the site or sites have either been land applied in accordance with the permit requirements or totally removed and used at another site in accordance with the permit requirements or removed and disposed at a permitted landfill; and

c. signed agreements from the landowner(s) of the site or sites for the site or sites to be removed from the land application of biosolids.

3. After receipt and review of the request package required in Paragraph N.1 of this Section for the addition of a land application site or sites or the request package required in Paragraph N.2 of this Section for the removal of a land application site or sites, a decision shall be rendered by the administrative authority regarding the request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(1)(c) and (B)(3)(e).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:785 (April 2002), repromulgated LR 30:233 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2374 (November 2007).

### **§7305. Siting and Operation Requirements for Commercial Preparers of Sewage Sludge [Formerly §6905]**

A. Exemption. A *publicly owned treatment works (POTW)*, as defined in LAC 33:IX.7301.B, shall be exempted from the siting requirements in Subsection B of this Section and the facility closure requirements in Paragraph C.3 of this Section if the POTW prepares only sewage sludge generated at the POTW or sewage sludge generated at a facility that is owned or operated by the POTW and the POTW's sewage sludge treatment facility is located within the POTW's boundary or perimeter.

#### **B. Siting**

##### **1. Location Characteristics**

a. Facilities shall not be located less than 200 feet from a property line. A reduction in this requirement shall be allowed only with the permission, in the form of a notarized affidavit, of the adjoining landowners and occupants. A copy of the notarized affidavit waiving the 200-foot buffer zone shall be entered in the mortgage and conveyance records of the parish for the adjoining landowner's property.

b. Facilities shall not be located less than 300 feet from a private potable water supply or a private water supply elevated storage tank or ground storage tank unless special permission is granted by the private potable water supply owner.

c. Facilities shall not be located less than 300 feet from a public potable water supply or a public water supply elevated storage tank or ground storage tank unless special permission is granted by the Department of Health and Hospitals.

d. Facilities shall not be located less than 100 feet from wetlands, surface waters (streams, ponds, lakes), or areas historically subject to overflow from floods.

e. Facilities shall only be located in a hydrologic section where the historic high water table is at a minimum of a 3-foot depth below the surface, or the water table at the facility shall be controlled to a minimum of a 3-foot depth below this zone.

f. Untreated sewage sludge, other materials, feedstock, or supplements to be utilized at a facility shall not be located less than 25 feet from a subsurface drainage pipe or drainage ditch that discharges directly to waters of the state.

g. New or first-time-permitted facilities that are not located within the boundaries of a legally zoned and established industrial park:

i. shall not be located less than 1,000 feet from an established *institution*, as defined in LAC 33:IX.7301.B, unless special permission is granted by the owner of the institution. The permission must be in the form of an affidavit executed by the owner waiving the 1,000-foot buffer zone. However, in no case shall the facility be located less than 200 feet from such an institution; and

ii. shall not be located less than 500 feet from an established home residence unless special permission has been granted by the owner and/or lessee of the established home residence in the form of an affidavit executed by the owner and/or lessee waiving the 500-foot buffer zone. However, in no case shall the facility be located less than 200 feet from an established home residence.

h. Facilities that prepare or compost only sewage sludge or blend, mix, or compost sewage sludge and have only woodchips or yard waste (e.g., leaves, lawn clippings, or branches) as feedstock or supplements shall not be located closer than the greater of the following distances from an airport:

i. 1,200 feet from the *air operations area*, as defined in LAC 33:IX.7301.B; or

ii. the distance called for by the U.S. Department of Transportation Federal Aviation Administration's airport design requirements.

i. Facilities that blend, mix, or compost sewage sludge that include food or other municipal solid waste as feedstock or supplements shall not be located closer than:

i. 5,000 feet from any airport property boundary (including the air operations area) if the airport does not sell Jet-A fuel and serves only piston-powered aircraft; or

ii. 10,000 feet from any airport property boundary (including the air operations area) if the airport sells Jet-A fuel and serves turbine-powered aircraft, or sells Jet-A fuel and is designed to serve turbine-powered and/or piston-powered aircraft.

j. Storage and processing of sewage sludge or biosolids is prohibited within any of the buffer zones indicated in Subparagraphs B.1.a-i of this Section.

k. Facilities located in, or within 1,000 feet of, swamps, marshes, wetlands, estuaries, wildlife-hatchery areas, habitat of endangered species, archaeological sites, historic sites, publicly owned recreation areas, and similar critical environmental areas shall be isolated from such areas by effective barriers that eliminate probable adverse impacts from facility operations.

l. Facilities located in, or within 1,000 feet of, an aquifer recharge zone shall be designed to protect the area from adverse impacts of operations at the facility.

m. Access to facilities by land or water transportation shall be by all-weather roads or waterways that can meet the demands of the facility and are designed to avoid, to the extent practicable, congestion, sharp turns, obstructions, or other hazards conducive to accidents; and

the surface roadways shall be adequate to withstand the weight of transportation vehicles.

## 2. Facility Characteristics

### a. Perimeter Barriers, Security, and Signs

i. All facilities shall have a perimeter barrier around the facility that prevents unauthorized ingress or egress, except by willful entry.

ii. During operating hours, each facility entry point shall be continuously monitored, manned, or locked.

iii. During non-operating hours, each facility entry point shall be locked.

iv. All facilities that receive sewage sludge, other materials, feedstock, or supplements from off-site sources shall post readable signs that list the types of sewage sludge, other materials, feedstock, or supplements that can be received at the facility.

b. Fire Protection and Medical Care. All facilities shall have access to required fire protection and medical care with access gates that are wide enough to allow easy access for emergency vehicles, or such services shall be provided internally.

### c. Receiving and Monitoring Sewage Sludge, Other Materials, Feedstock, or Supplements Used

i. Any facility used to prepare sewage sludge shall be equipped with a device or method to determine quantity (by wet-weight tonnage), sources (whether the sewage sludge, other materials, feedstock, or supplements to be mixed with the sewage were generated in-state or out-of-state), and types of other materials, feedstock, or supplements. The facility shall also be equipped with a device or method to control entry of sewage sludge, other materials, feedstock, or supplements coming on-site and prevent entry of unrecorded or unauthorized deliverables (i.e., hazardous, industrial, unauthorized, or unpermitted solid waste).

ii. Any facility used to prepare sewage sludge shall be equipped with a central control and recordkeeping system for tabulating the information required in Clause B.2.c.i of this Section.

## 3. Facility Surface Hydrology

a. Surface-runoff-diversion levees, canals, or devices shall be installed to prevent drainage from the facility to adjoining areas during a 24-hour/25-year storm event. When rainfall records are not available, the design standard shall be 12 inches of rainfall below 31 degrees north latitude and 9 inches of rainfall above 31 degrees north latitude. If the 24-hour/25-year storm event level is lower, the design standard shall be required.

b. Storm water run-on shall be prevented from entering the receiving, processing, curing, and storage areas by the use of berms or other physical barriers.

c. The topography of the facility shall provide for drainage to prevent standing water and shall allow for drainage away from the facility.

d. All storm water and wastewater from a facility must conform to applicable requirements of LAC 33:IX.Chapters 23-67.

## 4. Facility Geology

a. Except as provided in Subparagraph B.4.c of this Section, facilities shall have natural stable soils of low permeability for the area occupied by the facility, including vehicle parking and turnaround areas, that should provide a

barrier to prevent any penetration of surface spills into groundwater aquifers underlying the area or to a sand or other water-bearing strata that would provide conduits to such an aquifer.

b. The natural soil surface must be capable of supporting heavy equipment operation during and after prolonged periods of rain.

c. A design for surfacing natural soils that do not meet the requirements in Subparagraphs B.4.a and b of this Section shall be prepared under the supervision of a registered engineer, licensed in the state of Louisiana with expertise in geotechnical engineering and geohydrology. Written certification by the engineer that the surface satisfies the requirements of Subparagraphs B.4.a and b of this Section shall be provided.

5. Facility Plans and Specifications. Facility plans and specifications represented and described in the permit applications or permit modifications for all facilities must be prepared under the supervision of, and certified by, a registered engineer, licensed in the state of Louisiana.

#### 6. Facility Administrative Procedures

a. Permit Modifications. Permit modifications shall be in accordance with the requirements of this Chapter.

b. Personnel. All facilities shall have the personnel necessary to achieve the operational requirements of the facility.

#### C. Operations

##### 1. Operational Requirements for All Preparers of Sewage Sludge

###### a. Facility Operations and Maintenance Manual

i. A facility operations and maintenance manual shall be developed and forwarded with the permit application to the administrative authority.

ii. The facility operations and maintenance manual shall describe, in specific detail, how the sewage sludge and the other feedstock or supplements to be blended, composted, or mixed with the sewage sludge (if applicable) will be managed during all phases of processing operations. At a minimum, the manual shall address the following:

- (a). site and project description;
- (b). regulatory interfaces;
- (c). process management plan;
- (d). pathogen treatment plan;
- (e). odor management plan;
- (f). worker health and safety management plan;
- (g). housekeeping and nuisance management plan;
- (h). emergency preparedness plan;
- (i). security, community relations, and public access plan;
- (j). regulated chemicals (list and location of regulated chemicals kept on-site);
- (k). recordkeeping procedures;
- (l). feedstock, supplements, and process management;
- (m). product distribution records;
- (n). operator certification; and
- (o). administration of the operations and maintenance manual.

iii. The facility operations and maintenance manual shall be kept on-site and readily available to

employees and, if requested, to the administrative authority or his/her duly authorized representative.

#### b. Facility Operational Standards

i. The facility must include a receiving area, a mixing area, a curing area, a compost storage area for composting operations, drying and screening areas, and a truck wash area, which shall be located on surfaces capable of preventing groundwater contamination (periodic inspections of the surface shall be made to ensure that the underlying soils and the surrounding land surface are not being contaminated).

ii. All containers shall provide containment of the sewage sludge and the other feedstock or supplements to be blended, composted, or mixed with the sewage sludge, and thereby control litter and other pollution of adjoining areas.

iii. Provisions shall be made for the daily cleanup of the facility, including equipment and waste-handling areas.

iv. Treatment facilities for washdown and contaminated water shall be provided, or the wastewater contained, collected, and transported off-site to an approved wastewater treatment facility.

#### v. Leachate produced in the composting process:

(a). shall be collected and disposed off-site at a permitted facility; or

(b). shall be collected, treated, and discharged on-site in accordance with LAC 33:IX.Chapters 23-67; or

(c). may be reused in the composting process as a source of moisture.

vi. Sufficient equipment shall be provided and maintained at all facilities to meet their operational needs.

#### vii. Odor Management

(a). The production of odor shall be minimized.

(b). Processed air and other sources of odor shall be contained and, if necessary, treated in order to remove odor before discharging to the atmosphere.

viii. Other feedstock and supplements that are blended, composted, or mixed with sewage sludge shall be treated for the effective removal of sharps including, but not limited to, sewing needles, straight pins, hypodermic needles, telephone wires, and metal bracelets.

##### 2. Additional Operational Requirements for Composters

a. The facility operations and maintenance manual shall include the methods utilized for managing the biological conditions during the composting procedure (i.e., carbon/nitrogen ratio, moisture, O<sub>2</sub> levels, free air space).

b. The composting procedure shall begin within 24 hours of receipt of the material to be prepared as a compost.

c. The facility shall have a storage capacity designed for the finished compost for a quantity not to exceed 18 months' production.

d. Any compost made from sewage sludge that cannot be used according to these regulations shall be reprocessed or disposed of in an approved facility.

e. Composted sewage sludge shall be used, sold, or disposed of at a permitted disposal facility within 36 months of completion of the composting process.

f. The final composted product shall be stable and mature.

g. In addition to the label requirements in LAC 33:IX.7303.L.1.f.i-viii, the label that must accompany all

compost sold or given away either in bulk or in a bag or other container shall contain the following information:

- i. soluble salt content;
- ii. water holding capacity;
- iii. bulk density (lbs/yd<sup>3</sup>);
- iv. particle size;
- v. moisture content; and
- vi. organic matter content.

h. Adequate covers shall be provided for windrows during the curing stage to protect the compost from rainwater.

i. Covered areas shall be provided where feedstock is prepared.

### 3. Facility Closure Requirements

a. Notification of Intent to Close a Facility. All permit holders shall notify the administrative authority in writing at least 90 days before closure or intent to close, seal, or abandon any individual units within a facility and shall provide the following information:

- i. the date of planned closure;
- ii. changes, if any, requested in the approved closure plan; and
- iii. the closure schedule and estimated cost.

#### b. Closure Requirements

i. An insect and rodent inspection is required before closure. Extermination measures, if required, must be provided.

ii. All remaining untreated and unprepared sewage sludge, other materials, feedstock, and supplements shall be dewatered, removed, and disposed of in a permitted facility within 10 days of ceasing operations.

iii. All biosolids shall be used or disposed of in accordance with the provisions set forth in these regulations within 10 days of ceasing operations.

c. Additional Closure Requirements. Additional closure requirements for commercial preparers of sewage sludge who utilize composting as the process to prepare the sewage sludge and for all other commercial preparers of sewage sludge who prepare an amount of sewage sludge equal to or greater than 15,000 metric tons per year are as follows.

i. The permit holder shall verify that the soils within the facility boundary have not been contaminated in the operation of the facility.

ii. If contamination exists, a remediation/removal program developed to meet the requirements of Subparagraph C.3.d of this Section must be provided to the administrative authority.

#### d. Remediation/Removal Program

i. If a clean closure is achieved, there are no further post-closure requirements. The plan for clean closure must reflect a method for determining that all waste has been removed, and such a plan shall, at a minimum, include the following:

(a). identification (analysis) of the sewage sludge, other materials, feedstock, and supplements that have entered the facility;

(b). selection of the indicator parameters to be sampled that are intrinsic to the sewage sludge, other materials, feedstock, and supplements that have entered the facility in order to establish clean-closure criteria.

Justification of the parameters selected shall be provided in the closure plan;

(c). sampling and analyses of the uncontaminated soils in the general area of the facility for a determination of background levels using the indicator parameters selected. A diagram showing the location of the area proposed for the background sampling, along with a description of the sampling and testing methods, shall be provided;

(d). a discussion of the sampling and analyses of the "clean" soils for the selected parameters after the waste and contaminated soils have been excavated. Documentation regarding the sampling and testing methods (i.e., including a plan view of the facility, sampling locations, and sampling quality-assurance/quality-control programs) shall be provided;

(e). a discussion of a comparison of the sample(s) from the area of the excavated facility to the background sample. Concentrations of the selected parameter(s) of the bottom and side soil samples of the facility must be equal to or less than the background sample to meet clean closure criteria;

(f). submission of the analyses to the Office of Environmental Services confirming that the requirements of Subparagraph C.3.b of this Section have been satisfied;

(g). identification of the facility to be used for the disposal of the excavated waste; and

(h). a statement from the permit holder indicating that, after the closure requirements have been met, the permit holder will file a request for a closure inspection with the Office of Environmental Services before backfilling takes place. The administrative authority will determine whether the facility has been closed properly.

ii. If the permit holder demonstrates that removal of most of the biosolids, untreated sewage sludge, other materials, feedstock, and supplements in order to achieve an alternate level of contaminants based on indicator parameters in the contaminated soil will be adequately protective of human health and the environment (including groundwater) in accordance with LAC 33:I.Chapter 13, the administrative authority may decrease or eliminate the post-closure requirements.

(a). If levels of contamination at the time of closure meet applicable standards as specified in LAC 33:I.Chapter 13 and approval of the administrative authority is granted, the requirements of Clause C.3.c.ii of this Section shall not apply.

(b). Excepting those sites closed in accordance with Subclause C.3.c.ii.(a) of this Section, within 90 days after a closure is completed, the permit holder must have entered in the mortgage and conveyance records of the parish in which the property is located, a notation stating that solid waste remains at the site and providing the indicator levels obtained during closure.

iii. Upon determination by the administrative authority that a facility has completed closure in accordance with an approved plan, the administrative authority shall release the closure fund to the permit holder.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(1)(c) and (B)(3)(e).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:794 (April 2002),

repromulgated LR 30:233 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2516 (October 2005), LR 33:2382 (November 2007).

**§7307. Financial Assurance Requirements for Commercial Preparers of Sewage Sludge and Commercial Land Appliers of Biosolids [Formerly §6907]**

A. Financial Responsibility during Operation. Commercial preparers of sewage sludge and commercial land appliers of biosolids have the following financial responsibilities while their facilities are in operation.

1. Commercial preparers of sewage sludge and commercial land appliers of biosolids have the same financial assurance requirements as privately-owned sewage treatment facilities (LAC 33:IX.Chapter 67) if the amount of sewage sludge prepared or the amount of biosolids applied to the land is less than 15,000 metric tons per year. If these requirements cannot be met, an alternative financial assurance mechanism shall be submitted for review and approval by the administrative authority. Such an alternative financial assurance mechanism shall not result in a value of financial assurance that is less than the amount provided as a written cost estimate for closure of the facility in the permit application.

2. All other commercial preparers of sewage sludge and commercial land appliers of biosolids shall maintain liability insurance, or its equivalent, for sudden and accidental occurrences in the amount of \$1 million per occurrence and \$1 million annual aggregate, per site, exclusive of legal defense costs, for claims arising from injury to persons or property, owing to the operation of the site. Evidence of this coverage shall be updated annually and provided to the Office of Environmental Services. This financial responsibility may be established by any one or a combination of the following.

a. Evidence of Liability Insurance. Evidence of liability insurance may consist of either a signed duplicate original of a commercial preparer of sewage sludge or commercial land applier of biosolids liability endorsement, or a certificate of insurance. All liability endorsements and certificates of insurance must include:

- i. a statement of coverage relative to environmental risks;
- ii. a statement of all exclusions to the policy; and
- iii. a certification by the insurer that the insurance afforded with respect to such sudden accidental occurrences is subject to all of the terms and conditions of the policy provided, however, that any provisions of the policy inconsistent with Subclauses A.2.a.iii.(a)-(f) of this Section are amended to conform with said Subclauses:

(a). bankruptcy or insolvency of the insured shall not relieve the insurer of its obligations under the policy;

(b). the insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in Subparagraph A.2.d, e, or f of this Section;

(c). whenever requested by the administrative authority, the insurer agrees to furnish to the administrative

authority a signed duplicate original of the policy and all endorsements;

(d). cancellation of the policy, whether by the insurer or the insured, will be effective only upon written notice and upon lapse of 60 days after a copy of such written notice is received by the Office of Environmental Services;

(e). any other termination of the policy will be effective only upon written notice and upon lapse of 30 days after a copy of such written notice is received by the Office of Environmental Services; and

(f). the insurer is admitted, authorized, or eligible to conduct insurance business in the state of Louisiana.

b. Wording of Liability Endorsement. The wording of a liability endorsement shall be identical to the wording in LAC 33:IX.7395.Appendix A, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted.

c. Wording of Certificate of Insurance. The wording of a certificate of insurance shall be identical to the wording in LAC 33:IX.7395.Appendix B, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted.

d. Letter of Credit. A permit holder or applicant may satisfy the requirements of this Subsection by obtaining an irrevocable standby letter of credit that conforms to the following requirements and submitting the letter to the administrative authority.

i. The issuing institution must be an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.

ii. A permit holder or applicant who uses a letter of credit to satisfy the requirements of this Subsection must also provide to the administrative authority evidence of the establishment of a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the administrative authority will be deposited by the issuing institution directly into the standby trust fund. The wording of the standby trust fund agreement shall be as specified in Subparagraph B.3.i of this Section.

iii. The letter of credit must be accompanied by a letter from the permit holder or applicant referring to the letter of credit by number, name of issuing institution, and date, and providing the following information:

- (a). the agency interest number;
- (b). the site name;
- (c). the facility name;
- (d). the facility permit number; and
- (e). the amount of funds assured for liability coverage of the facility by the letter of credit.

iv. The letter of credit must be irrevocable and issued for a period of at least one year unless, at least 120 days before the current expiration date, the issuing institution notifies both the permit holder and the administrative authority by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the permit holder and the Office of Environmental Services receive the notice, as evidenced by the return receipts.

v. The wording of the letter of credit shall be identical to the wording in LAC 33:IX.7395.Appendix C, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted.

e. Financial Test

i. To meet this test, the applicant, permit holder, or parent corporation of the applicant (corporate guarantor) or permit holder must submit to the Office of Environmental Services the documents required by Paragraph B.8 of this Section demonstrating that the requirements of Paragraph B.8 of this Section have been met. Use of the financial test may be disallowed on the basis of the accessibility of the assets of the permit holder, applicant, or parent corporation (corporate guarantor). If the applicant, permit holder, or parent corporation is using the financial test to demonstrate liability coverage and closure and post-closure care, only one letter from the chief financial officer is required.

ii. The assets of the parent corporation of the applicant or permit holder shall not be used to determine whether the applicant or permit holder satisfies the financial test, unless the parent corporation has supplied a corporate guarantee as authorized in Subparagraph A.2.f of this Section.

iii. The wording of the financial test shall be as specified in Subparagraph B.8.d of this Section.

f. Corporate Guarantee

i. A permit holder or applicant may meet the requirements of Paragraph A.2 of this Section for liability coverage by obtaining a written guarantee, hereafter referred to as a *corporate guarantee*. The guarantor must demonstrate to the administrative authority that the guarantor meets the requirements in this Subsection and must comply with the terms of the corporate guarantee. The corporate guarantee must accompany the items sent to the administrative authority specified in Subparagraphs B.8.b and d of this Section. The terms of the corporate guarantee must be in an authentic act signed and sworn to by an authorized officer of the corporation before a notary public and must provide that:

(a). the guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in Paragraph B.8 of this Section;

(b). the guarantor is the parent corporation of the permit holder or applicant of the commercial preparer of sewage sludge or land applier of biosolids to be covered by the guarantee, and the guarantee extends to certain facilities;

(c). if the permit holder or applicant fails to satisfy a judgment based on a determination of liability for bodily injury or property damage to third parties caused by sudden and accidental occurrences (or both as the case may be), arising from the operation of facilities covered by the corporate guarantee, or fails to pay an amount agreed to in settlement of the claims arising from or alleged to arise from such injury or damage, the guarantor will do so up to the limits of coverage;

(d). the guarantor agrees that if, at the end of any fiscal year before termination of the guarantee, the guarantor fails to meet the financial test criteria, the guarantor shall send within 90 days, by certified mail, notice to the Office of Environmental Services and to the permit holder or applicant, that he intends to provide alternative financial

assurance as specified in this Subsection, in the name of the permit holder or applicant, and that within 120 days after the end of said fiscal year the guarantor shall establish such financial assurance, unless the permit holder or applicant has done so;

(e). the guarantor agrees to notify the Office of Environmental Services by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the guarantor as debtor, within 10 days after commencement of the proceeding;

(f). the guarantor agrees that within 30 days after being notified by the administrative authority of a determination that the guarantor no longer meets the financial test criteria or that he or she is disallowed from continuing as a guarantor of closure or post-closure care, he or she shall establish alternate financial assurance as specified in this Subsection in the name of the permit holder or applicant unless the permit holder or applicant has done so;

(g). the guarantor agrees to remain bound under the guarantee notwithstanding any or all of the following: amendment or modification of the permit, or any other modification or alteration of an obligation of the permit holder or applicant in accordance with these regulations;

(h). the guarantor agrees to remain bound under the guarantee for as long as the permit holder or applicant must comply with the applicable financial assurance requirements of Subsection B of this Section for the above-listed facilities, except that the guarantor may cancel this guarantee by sending notice by certified mail to the administrative authority and the permit holder or applicant. Such cancellation will become effective no earlier than 90 days after receipt of such notice by both the administrative authority and the permit holder, as evidenced by the return receipts;

(i). the guarantor agrees that if the permit holder or applicant fails to provide alternate financial assurance, as specified in this Subsection, and obtain written approval of such assurance from the administrative authority within 60 days after the administrative authority receives the guarantor's notice of cancellation, the guarantor shall provide such alternate financial assurance in the name of the permit holder or applicant;

(j). the guarantor expressly waives notice of acceptance of the guarantee by the administrative authority or by the permit holder or applicant. Guarantor also expressly waives notice of amendments or modifications of the facility permit(s); and

(k). the wording of the corporate guarantee shall be as specified in Subparagraph B.8.i of this Section.

ii. A corporate guarantee may be used to satisfy the requirements of this Section only if the attorney general(s) or insurance commissioner(s) of the state in which the guarantor is incorporated, and the state in which the facility covered by the guarantee is located, has submitted a written statement to the Office of Environmental Services that a corporate guarantee is a legally valid and enforceable obligation in that state.

g. The use of a particular financial responsibility mechanism is subject to the approval of the administrative authority.

h. Permit holders of existing facilities must submit, on or before February 20, 1995, financial responsibility documentation that complies with the requirements of this Subsection. Applicants for permits for new facilities must submit evidence of financial assurance in accordance with this Section at least 60 days before the date on which sewage sludge, other materials, feedstock, or supplements are first received for processing.

B. Financial Responsibility for Closure and Post-Closure Care for a Commercial Preparer of Sewage Sludge

1. Permit holders or applicants have the following financial responsibilities for closure and post-closure care.

a. Permit holders or applicants shall establish and maintain financial assurance for closure and post-closure care.

b. The applicant or permit holder shall submit to the Office of Environmental Services the estimated closure date and the estimated cost of closure and post-closure care in accordance with the following procedures.

i. The applicant or permit holder must have a written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in these rules. The estimate must equal the cost of closure at the point in the facility's operating life when the extent and manner of its operation would make closure the most expensive, as indicated by the closure plan, and shall be based on the cost of hiring a third party to close the facility in accordance with the closure plan.

ii. The applicant or permit holder of a facility subject to post-closure monitoring or maintenance requirements must have a written estimate, in current dollars, of the annual cost of post-closure monitoring and maintenance of the facility in accordance with the provisions of these rules. The estimate of post-closure costs is calculated by multiplying the annual post-closure cost estimate by the number of years of post-closure care required, and shall be based on the cost of hiring a third party to conduct post-closure activities in accordance with the closure plan.

iii. The cost estimates must be adjusted within 30 days after each anniversary of the date on which the first cost estimate was prepared, on the basis of either the inflation factor derived from the Annual Implicit Price Deflator for Gross Domestic Product, as published by the U.S. Department of Commerce in its *Survey of Current Business* or a reestimation of the closure and post-closure costs in accordance with Clauses B.1.b.i-ii of this Section. The permit holder or applicant must revise the cost estimate whenever a change in the closure/post-closure plans increases or decreases the cost of the closure plan. The permit holder or applicant must submit a written notice of any such adjustment to the Office of Environmental Services within 15 days following such adjustment.

iv. For trust funds, the first payment must be at least equal to the current closure and post-closure cost estimate, divided by the number of years in the pay-in period. Subsequent payments must be made no later than 30 days after each annual anniversary of the date of the first payment. The amount of each subsequent payment must be determined by subtracting the current value of the trust fund from the current closure and post-closure cost estimates and dividing the result by the number of years remaining in the

pay-in period. The initial pay-in period is based on the estimated life of the facility.

2. Financial Assurance Mechanisms. The financial assurance mechanism must be one or a combination of the following: a trust fund, a financial guarantee bond ensuring closure funding, a performance bond, a letter of credit, an insurance policy, or the financial test. The financial assurance mechanism is subject to the approval of the administrative authority and must fulfill the following criteria.

a. Except when a financial test, trust fund, or certificate of insurance is used as the financial assurance mechanism, a standby trust fund naming the administrative authority as beneficiary must be established at the time of the creation of the financial assurance mechanism into which the proceeds of such mechanism could be transferred should such funds be necessary for either closure or post-closure of the facility, and a signed copy must be furnished to the administrative authority with the mechanism.

b. A permit holder or applicant may use a financial assurance mechanism specified in this Section for more than one facility, if all such facilities are located within the state of Louisiana and are specifically identified in the mechanism.

c. The amount covered by the financial assurance mechanism(s) must equal the total of the current closure and post-closure estimates for each facility covered.

d. When all closure and post-closure requirements have been satisfactorily completed, the administrative authority shall execute an approval to terminate the financial assurance mechanism(s).

3. Trust Funds. A permit holder or applicant may satisfy the requirements of this Section by establishing a closure trust fund that conforms to the following requirements and submitting an originally-signed duplicate of the trust agreement to the Office of Environmental Services.

a. The trustee must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

b. Trusts must be accomplished in accordance with and subject to the laws of the state of Louisiana. The beneficiary of the trust shall be the administrative authority.

c. Trust fund earnings may be used to offset required payments into the fund, to pay the fund trustee, or to pay other expenses of the funds, or may be reclaimed by the permit holder or applicant upon approval of the administrative authority.

d. The trust agreement must be accompanied by an affidavit certifying the authority of the individual signing the trust on behalf of the permit holder or applicant.

e. The permit holder or applicant may accelerate payments into the trust fund or deposit the full amount of the current closure cost estimate at the time the fund is established. The permit holder or applicant must, however, maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in Clause B.1.b.iv of this Section.

f. If the permit holder or applicant establishes a trust fund after having used one or more of the alternate mechanisms specified in this Section, his first payment must be in at least the amount that the fund would contain if the

trust fund were established initially and annual payments made according to the specifications of this Paragraph.

g. After the pay-in period is completed, whenever the current cost estimate changes, the permit holder must compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the permit holder or applicant, within 60 days after the change in the cost estimate, must either deposit an amount into the fund that will make its value at least equal to the amount of the closure/post-closure cost estimate or it must estimate or obtain other financial assurance as specified in this Section to cover the difference.

h. After beginning final closure, a permit holder or any other person authorized by the permit holder to perform closure and/or post-closure may request reimbursement for closure and/or post-closure expenditures by submitting itemized bills to the Office of Environmental Services. Within 60 days after receiving bills for such activities, the administrative authority will determine whether the closure and/or post-closure expenditures are in accordance with the closure plan or otherwise justified, and if so, he or she will instruct the trustee to make reimbursement in such amounts as the administrative authority specifies in writing. If the administrative authority has reason to believe that the cost of closure and/or post-closure will be significantly greater than the value of the trust fund, he may withhold reimbursement for such amounts as he deems prudent until he determines that the permit holder is no longer required to maintain financial assurance.

i. The wording of the trust agreement shall be identical to the wording in LAC 33:IX.7395.Appendix D, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted. The trust agreement shall be accompanied by a formal certification of acknowledgement, as in the example in LAC 33:IX.7395.Appendix D.

4. Surety Bonds. A permit holder or applicant may satisfy the requirements of this Subsection by obtaining a surety bond that conforms to the following requirements and submitting the bond to the Office of Environmental Services.

a. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury, and be approved by the administrative authority.

b. The permit holder or applicant who uses a surety bond to satisfy the requirements of this Subsection must also provide to the administrative authority evidence of the establishment of a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the administrative authority. The wording of the standby trust fund shall be as specified in Subparagraph B.3.i of this Section.

c. The bond must guarantee that the operator will:

i. fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of final closure of the facility;

ii. fund the standby trust fund in an amount equal to the penal sum within 15 days after an order to begin closure or post-closure is issued; or

iii. provide alternate financial assurance, as specified in this Section, and obtain the administrative authority's written approval of the assurance provided within 90 days after receipt by both the permit holder and the administrative authority of a notice of cancellation of the bond from the surety.

d. Under the terms of the bond, the surety will become liable on the bond obligation when the permit holder fails to perform as guaranteed by the bond.

e. The penal sum of the bond must be at least equal to the current closure and post-closure cost estimates.

f. Whenever the current cost estimate increases to an amount greater than the penal sum, the permit holder, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current closure and post-closure estimate and submit evidence of such increase to the Office of Environmental Services or obtain other financial assurance as specified in this Section to cover the increase. Whenever the current cost estimate decreases, the penal sum may be reduced to the amount of the current cost estimate following written approval by the administrative authority.

g. Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the permit holder and to the Office of Environmental Services. Cancellation may not occur, however, before 120 days have elapsed, beginning on the date that both the permit holder and the administrative authority have received the notice of cancellation, as evidenced by the return receipts.

h. The wording of the surety bond guaranteeing payment into a standby trust fund shall be identical to the wording in LAC 33:IX.7395.Appendix E, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted.

5. Performance Bonds. A permit holder or applicant may satisfy the requirements of this Subsection by obtaining a surety bond that conforms to the following requirements and submitting the bond to the Office of Environmental Services.

a. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury, and be approved by the administrative authority.

b. The permit holder or applicant who uses a surety bond to satisfy the requirements of this Subsection must also provide to the administrative authority evidence of establishment of a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the administrative authority. The wording of the standby trust fund shall be as specified in Subparagraph B.3.i of this Section.

c. The bond must guarantee that the permit holder or applicant will:

i. perform final closure and post-closure in accordance with the closure plan and other requirements of the permit for the facility whenever required to do so; or

ii. provide alternate financial assurance, as specified in this Section, and obtain the administrative authority's written approval of the assurance provided within 90 days after the date both the permit holder and the

administrative authority receive notice of cancellation of the bond from the surety.

d. Under the terms of the bond, the surety will become liable on the bond obligation when the permit holder fails to perform as guaranteed by the bond. Following a determination by the administrative authority that the permit holder has failed to perform final closure and post-closure in accordance with the closure plan and other permit requirements when required to do so, under the terms of the bond the surety will perform final closure and post-closure as guaranteed by the bond or will deposit the amount of the penal sum into the standby trust fund.

e. The penal sum of the bond must be at least equal to the current closure and post-closure cost estimates.

f. Whenever the current closure cost estimate increases to an amount greater than the penal sum, the permit holder, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current closure and post-closure cost estimates and submit evidence of such increase to the Office of Environmental Services or obtain other financial assurance as specified in this Section. Whenever the current cost estimate decreases, the penal sum may be reduced to the amount of the current cost estimate after written approval of the administrative authority.

g. Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the permit holder and to the Office of Environmental Services. Cancellation may not occur before 120 days have elapsed beginning on the date that both the permit holder and the administrative authority have received the notice of cancellation, as evidenced by the return receipts.

h. The wording of the performance bond shall be identical to the wording in LAC 33:IX.7395.Appendix F, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted.

6. Letter of Credit. A permit holder or applicant may satisfy the requirements of this Subsection by obtaining an irrevocable standby letter of credit that conforms to the following requirements and submitting the letter to the Office of Environmental Services.

a. The issuing institution must be an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.

b. A permit holder or applicant who uses a letter of credit to satisfy the requirements of this Subsection must also provide to the administrative authority evidence of the establishment of a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the administrative authority will be deposited by the issuing institution directly into the standby trust fund. The wording of the standby trust fund shall be as specified in Subparagraph B.3.i of this Section.

c. The letter of credit must be accompanied by a letter from the permit holder or applicant referring to the letter of credit by number, issuing institution, and date, and providing the following information:

- i. the agency interest number;
- ii. the site name;
- iii. the facility name;

iv. the facility permit number; and

v. the amount of funds assured for closure and/or post closure of the facility by the letter of credit.

d. The letter of credit must be irrevocable and issued for a period of at least one year, unless, at least 120 days before the current expiration date, the issuing institution notifies both the permit holder and Office of Environmental Services by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the permit holder and the administrative authority have received the notice, as evidenced by the return receipts.

e. The letter of credit must be issued in an amount at least equal to the current closure and post-closure cost estimates.

f. Whenever the current cost estimates increase to an amount greater than the amount of the credit, the permit holder, within 60 days after the increase, must either cause the amount of the credit to be increased so that it at least equals the current closure and post-closure cost estimates and submit evidence of such increase to the Office of Environmental Services or obtain other financial assurance as specified in this Subsection to cover the increase. Whenever the current cost estimate decreases, the amount of the credit may be reduced to the amount of the current closure and post-closure cost estimates upon written approval of the administrative authority.

g. Following a determination by the administrative authority that the permit holder has failed to perform final closure or post-closure in accordance with the closure plan and other permit requirements when required to do so, the administrative authority may draw on the letter of credit.

h. The wording of the letter of credit shall be identical to the wording in LAC 33:IX.7395.Appendix G, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted.

7. Insurance. A permit holder or applicant may satisfy the requirements of this Subsection by obtaining insurance that conforms to the following requirements and submitting a certificate of such insurance to the Office of Environmental Services.

a. At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess- or surplus-lines insurer in one or more states, and authorized to transact insurance business in the state of Louisiana.

b. The insurance policy must be issued for a face amount at least equal to the current closure and post-closure cost estimates.

c. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

d. The insurance policy must guarantee that funds will be available to close the facility and provide post-closure care once final closure occurs. The policy must also guarantee that, once final closure begins, the insurer will be responsible for paying out funds up to an amount equal to the face amount of the policy, upon the direction of the administrative authority, to such party or parties as the administrative authority specifies.

e. After beginning final closure, a permit holder or any other person authorized by the permit holder to perform closure and post-closure may request reimbursement for closure or post-closure expenditures by submitting itemized bills to the Office of Environmental Services. Within 60 days after receiving such bills, the administrative authority will determine whether the expenditures are in accordance with the closure plan or otherwise justified, and if so, he or she will instruct the insurer to make reimbursement in such amounts as the administrative authority specifies in writing.

f. The permit holder must maintain the policy in full force and effect until the administrative authority consents to termination of the policy by the permit holder.

g. Each policy must contain a provision allowing assignment of the policy to a successor permit holder. Such assignment may be conditional upon consent of the insurer, provided consent is not unreasonably refused.

h. The policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the permit holder and the Office of Environmental Services. Cancellation, termination, or failure to renew may not occur, however, before 120 days have elapsed, beginning on the date that both the administrative authority and the permit holder receive notice of cancellation, as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur, and the policy will remain in full force and effect in the event that, on or before the date of expiration:

- i. the administrative authority deems the facility abandoned;
- ii. the permit is terminated or revoked or a new permit is denied;
- iii. closure and/or post-closure is ordered;
- iv. the permit holder is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or
- v. the premium due is paid.

i. Whenever the current cost estimate increases to an amount greater than the face amount of the policy, the permit holder, within 60 days after the increase, must either increase the face amount to at least equal to the current closure and post-closure cost estimates and submit evidence of such increase to the Office of Environmental Services or obtain other financial assurance as specified in this Subsection to cover the increase. Whenever the current cost estimate decreases, the face amount may be reduced to the amount of the current closure and post-closure cost estimates following written approval by the administrative authority.

j. The wording of the certificate of insurance shall be identical to the wording in LAC 33:IX.7395. Appendix H, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted.

8. Financial Test. A permit holder, applicant, or parent corporation of the permit holder or applicant, which will be responsible for the financial obligations, may satisfy the requirements of this Section by demonstrating that he or she passes a financial test as specified in this Paragraph. The

assets of the parent corporation of the applicant or permit holder shall not be used to determine whether the applicant or permit holder satisfies the financial test, unless the parent corporation has supplied a corporate guarantee as outlined in Paragraph A.2.f and/or B.8.i of this Section.

a. To pass this test, the permit holder, applicant, or parent corporation of the permit holder or applicant must meet either of the following criteria:

i. the permit holder, applicant, or parent corporation of the permit holder or applicant must have:

(a). tangible net worth of at least six times the sum of the current closure and post-closure estimates to be demonstrated by this test and the amount of liability coverage to be demonstrated by this test;

(b). tangible net worth of at least \$10 million; and

(c). assets in the United States amounting to either at least 90 percent of his total assets, or at least six times the sum of the current closure and post-closure estimates, to be demonstrated by this test, and the amount of liability coverage to be demonstrated by this test; or

ii. the permit holder, applicant, or parent corporation of the permit holder or applicant must have:

(a). a current rating for his most recent bond issuance of AAA, AA, A, or BBB, as issued by *Standard and Poor's*, or Aaa, Aa, or Baa, as issued by *Moody's*;

(b). tangible net worth of at least \$10 million; and

(c). assets in the United States amounting to either 90 percent of his total assets or at least six times the sum of the current closure and post-closure estimates, to be demonstrated by this test, and the amount of liability coverage to be demonstrated by this test.

b. To demonstrate that he or she meets this test, the permit holder, applicant, or parent corporation of the permit holder or applicant must submit the following three items to the Office of Environmental Services:

i. a letter signed by the chief financial officer of the permit holder, applicant, or parent corporation demonstrating and certifying the criteria in Subparagraph B.8.a of this Section and including the information required by Subparagraph B.8.d of this Section. If the financial test is provided to demonstrate both assurance for closure and/or post-closure care and liability coverage, a single letter to cover both forms of financial responsibility is required;

ii. a copy of the independent certified public accountant's (CPA's) report on the financial statements of the permit holder, applicant, or parent corporation of the permit holder or applicant for the latest completed fiscal year; and

iii. a special report from the independent CPA to the permit holder, applicant, or parent corporation of the permit holder or applicant stating that:

(a). the CPA has computed the data specified by the chief financial officer as having been derived from the independently audited, year-end financial statements with the amounts for the latest fiscal year in such financial statements; and

(b). in connection with that procedure, no matters came to his attention that caused him to believe that the specified data should be adjusted.

c. The administrative authority may disallow use of this test on the basis of the opinion expressed by the

independent CPA in his report on qualifications based on the financial statements. An adverse opinion or a disclaimer of opinion will be cause for disallowance. The administrative authority will evaluate other qualifications on an individual basis. The administrative authority may disallow the use of this test on the basis of the accessibility of the assets of the parent corporation (corporate guarantor), permit holder, or applicant. The permit holder, applicant, or parent corporation must provide evidence of insurance for the entire amount of required liability coverage, as specified in this Section, within 30 days after notification of disallowance.

d. The permit holder, applicant, or parent corporation (if a corporate guarantor) of the permit holder or applicant shall provide to the Office of Environmental Services a letter from the chief financial officer, the wording of which shall be identical to the wording in LAC 33:IX.7395.Appendix I, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted. The letter shall certify the following information:

i. a list of commercial facilities, whether in the state of Louisiana or not, owned or operated by the permit holder or applicant of the facility, for which financial assurance for liability coverage is demonstrated through the use of financial tests, including the amount of liability coverage;

ii. a list of commercial facilities, whether in the state of Louisiana or not, owned or operated by the permit holder or applicant, for which financial assurance for the closure or post-closure care is demonstrated through the use of a financial test or self-insurance by the permit holder or applicant, including the cost estimates for the closure and post-closure care of each facility;

iii. a list of the commercial facilities, whether in the state of Louisiana or not, owned or operated by any subsidiaries of the parent corporation for which financial assurance for closure and/or post-closure is demonstrated through the financial test or through use of self-insurance, including the current cost estimate for the closure or post-closure care for each facility and the amount of annual aggregate liability coverage for each facility; and

iv. a list of commercial facilities, whether in the state of Louisiana or not, for which financial assurance for closure or post-closure care is not demonstrated through the financial test, self-insurance, or other substantially equivalent state mechanisms, including the estimated cost of closure and post-closure of such facilities.

e. For the purposes of this Subsection the phrase *tangible net worth* shall mean the tangible assets that remain after liabilities have been deducted; such assets would not include intangibles such as good will and rights to patents or royalties.

f. The phrase *current closure and post-closure cost estimates*, as used in Subparagraph B.8.a of this Section, includes the cost estimates required to be shown in Subclause B.8.a.i.(a) of this Section.

g. After initial submission of the items specified in Subparagraph B.8.b of this Section, the permit holder, applicant, or parent corporation of the permit holder or applicant must send updated information to the Office of Environmental Services within 90 days after the close of each succeeding fiscal year. This information must include

all three items specified in Subparagraph B.8.b of this Section.

h. The administrative authority may, on the basis of a reasonable belief that the permit holder, applicant, or parent corporation of the permit holder or applicant may no longer meet the requirements of Paragraph B.8 of this Section, require reports of financial condition at any time in addition to those specified in Subparagraph B.8.b of this Section. If the administrative authority finds, on the basis of such reports or other information, that the permit holder, applicant, or parent corporation of the permit holder or applicant no longer meets the requirements of Subparagraph B.8.b of this Section, the permit holder or applicant, or parent corporation of the permit holder or applicant must provide alternate financial assurance as specified in this Subsection within 30 days after notification of such a finding.

i. A permit holder or applicant may meet the requirements of Paragraph B.8 of this Section for closure and/or post-closure by obtaining a written guarantee, hereafter referred to as a *corporate guarantee*. The guarantor must be the parent corporation of the permit holder or applicant. The guarantor must meet the requirements and submit all information required for permit holders or applicants in Subparagraphs B.8.a-h of this Section and must comply with the terms of the corporate guarantee. The corporate guarantee must accompany the items sent to the administrative authority specified in Subparagraphs B.8.b and d of this Section. The wording of the corporate guarantee must be identical to the wording in LAC 33:IX.7395.Appendix J, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted. The terms of the corporate guarantee must be in an authentic act signed and sworn by an authorized officer of the corporation before a notary public and must provide that:

i. the guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in Paragraph B.8 of this Section;

ii. the guarantor is the parent corporation of the permit holder or applicant of the commercial preparer of sewage sludge or land applier of biosolids to be covered by the guarantee, and the guarantee extends to certain facilities;

iii. *closure plans*, as used in the guarantee, refers to the plans maintained as required by the state of Louisiana commercial preparer of sewage sludge or land applier of biosolids rules and regulations for the closure and post-closure care of commercial preparers of sewage sludge facilities or commercial land appliers of biosolids sites, as identified in the guarantee;

iv. for value received from the permit holder or applicant, the guarantor guarantees to the Office of Environmental Services that the permit holder or applicant will perform closure, post-closure care, or closure and post-closure care of the facility or facilities listed in the guarantee, in accordance with the closure plan and other permit or regulatory requirements whenever required to do so. In the event that the permit holder or applicant fails to perform as specified in the closure plan, the guarantor shall do so or establish a trust fund as specified in Paragraph B.3 of this Section, in the name of the permit holder or applicant,

in the amount of the current closure or post-closure cost estimates or as specified in Subparagraph B.1.b of this Section;

v. the guarantor agrees that if, at the end of any fiscal year before termination of the guarantee, the guarantor fails to meet the financial test criteria, the guarantor shall send within 90 days after the end of the fiscal year, by certified mail, notice to the Office of Environmental Services and to the permit holder or applicant that he intends to provide alternative financial assurance as specified in this Subsection, in the name of the permit holder or applicant, and that within 120 days after the end of such fiscal year, the guarantor shall establish such financial assurance unless the permit holder or applicant has done so;

vi. the guarantor agrees to notify the Office of Environmental Services by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the guarantor as debtor, within 10 days after commencement of the proceeding;

vii. the guarantor agrees that within 30 days after being notified by the administrative authority of a determination that the guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor of closure or post-closure care, he shall establish alternate financial assurance as specified in this Subsection in the name of the permit holder or applicant, unless the permit holder or applicant has done so;

viii. the guarantor agrees to remain bound under the guarantee, notwithstanding any or all of the following: amendment or modification of the closure plan, amendment or modification of the permit, extension or reduction of the time of performance of closure or post closure, or any other modification or alteration of an obligation of the permit holder or applicant in accordance with these regulations;

ix. the guarantor agrees to remain bound under the guarantee for as long as the permit holder must comply with the applicable financial assurance requirements of this Subsection for the above-listed facilities, except that the guarantor may cancel this guarantee by sending notice by certified mail to the Office of Environmental Services and the permit holder or applicant. The cancellation will become effective no earlier than 90 days after receipt of such notice by both the administrative authority and the permit holder or applicant, as evidenced by the return receipts;

x. the guarantor agrees that if the permit holder or applicant fails to provide alternative financial assurance as specified in this Subsection, and to obtain written approval of such assurance from the administrative authority within 60 days after the administrative authority receives the guarantor's notice of cancellation, the guarantor shall provide such alternate financial assurance in the name of the owner or operator; and

xi. the guarantor expressly waives notice of acceptance of the guarantee by the administrative authority or by the permit holder. Guarantor also expressly waives notice of amendments or modifications of the closure plan and of amendments or modifications of the facility permit(s).

9. Local Government Financial Test. An owner or operator that satisfies the requirements of Subparagraphs B.9.a-c of this Section may demonstrate financial assurance up to the amount specified in Subparagraph B.9.d of this Section.

a. Financial Component

i. The owner or operator must satisfy the following conditions, as applicable:

(a) if the owner or operator has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, he must have a current rating of Aaa, Aa, A, or Baa, as issued by *Moody's*, or AAA, AA, A, or BBB, as issued by *Standard and Poor's*, on all such general obligation bonds; or

(b) the owner or operator must satisfy the ratio of cash plus marketable securities to total expenditures being greater than or equal to 0.05 and the ratio of annual debt service to total expenditures less than or equal to 0.20 based on the owner or operator's most recent audited annual financial statement.

ii. The owner or operator must prepare its financial statements in conformity with *Generally Accepted Accounting Principles* for governments and have his financial statements audited by an independent certified public accountant (or appropriate state agency).

iii. A local government is not eligible to assure its obligations under Paragraph B.9 of this Section if it:

(a) is currently in default on any outstanding general obligation bonds;

(b) has any outstanding general obligation bonds rated lower than Baa as issued by *Moody's* or BBB as issued by *Standard and Poor's*;

(c) operated at a deficit equal to 5 percent or more of total annual revenue in each of the past two fiscal years; or

(d) receives an adverse opinion, disclaimer of opinion, or other qualified opinion from the independent certified public accountant (or appropriate state agency) auditing its financial statement as required under Clause B.9.a.ii of this Section. The administrative authority may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the administrative authority deems the qualification insufficient to warrant disallowance of use of the test.

iv. The following terms used in this Subsection are defined as follows.

(a) *Deficit*—total annual revenues minus total annual expenditures.

(b) *Total Revenues*—revenues from all taxes and fees, but not including the proceeds from borrowing or asset sales, excluding revenue from funds managed by local government on behalf of a specific third party.

(c) *Total Expenditures*—all expenditures, excluding capital outlays and debt repayment.

(d) *Cash Plus Marketable Securities*—all the cash plus marketable securities held by the local government on the last day of a fiscal year, excluding cash and marketable securities designated to satisfy past obligations such as pensions.

(e) *Debt Service*—the amount of principal and interest due on a loan in a given time period, typically the current year.

b. Public Notice Component. The local government owner or operator must place a reference to the closure and post-closure care costs assured through the financial test into its next comprehensive annual financial report (CAFR) after

the effective date of this Section or prior to the initial receipt of sewage sludge, other feedstock, or supplements at the facility, whichever is later. Disclosure must include the nature and source of closure and post-closure care requirements, the reported liability at the balance sheet date, the estimated total closure and post-closure care cost remaining to be recognized, the percentage of landfill capacity used to date, and the estimated landfill life in years. For closure and post-closure costs, conformance with *Governmental Accounting Standards Board Statement 18* assures compliance with this public notice component.

c. Recordkeeping and Reporting Requirements

i. The local government owner or operator must place the following items in the facility's operating record:

(a). a letter signed by the local government's chief financial officer that lists all the current cost estimates covered by a financial test, as described in Subparagraph B.9.d of this Section. It must provide evidence that the local government meets the conditions of Clauses B.9.a.i-iii of this Section, and certify that the local government meets the conditions of Clauses B.9.a.i-iii and Subparagraphs B.9.b and d of this Section;

(b). the local government's independently audited year-end financial statements for the latest fiscal year (except for local governments where audits are required every two years, and unaudited statements may be used in years when audits are not required), including the unqualified opinion of the auditor, who must be an independent certified public accountant or an appropriate state agency that conducts equivalent comprehensive audits;

(c). a report to the local government from the local government's independent certified public accountant or the appropriate state agency based on performing an agreed-upon procedures engagement relative to the financial ratios required by Subclause B.9.a.i.(b) of this Section, if applicable, and the requirements of Clause B.9.a.ii and Subclauses B.9.a.iii.(c)-(d) of this Section. The certified public accountant or state agency's report should state the procedures performed and the certified public accountant or state agency's findings; and

(d). a copy of the comprehensive annual financial report (CAFR) used to comply with Subparagraph B.9.b of this Section (certification that the requirements of *General Accounting Standards Board Statement 18* have been met).

ii. The items required in Clause B.9.c.i of this Section must be placed in the facility operating record, in the case of closure and post-closure care, either before the effective date of this Section or prior to the initial receipt of sewage sludge, other feedstock, or supplements at the facility, whichever is later.

iii. After the initial placement of the items in the facility's operating record, the local government owner or operator must update the information and place the updated information in the operating record within 180 days following the close of the owner or operator's fiscal year.

iv. The local government owner or operator is no longer required to meet the requirements of Subparagraph B.9.c of this Section when:

(a). the owner or operator substitutes alternate financial assurance, as specified in this Section; or

(b). the owner or operator is released from the requirements of this Section in accordance with Subsection A or B of this Section.

v. A local government must satisfy the requirements of the financial test at the close of each fiscal year. If the local government owner or operator no longer meets the requirements of the local government financial test, it must, within 210 days following the close of the owner or operator's fiscal year, obtain alternative financial assurance that meets the requirements of this Section, place the required submissions for that assurance in the operating record, and notify the Office of Environmental Services that the owner or operator no longer meets the criteria of the financial test and that alternate assurance has been obtained.

vi. The administrative authority, based on a reasonable belief that the local government owner or operator may no longer meet the requirements of the local government financial test, may require additional reports of financial condition from the local government at any time. If the administrative authority finds, on the basis of such reports or other information, that the owner or operator no longer meets the local government financial test, the local government must provide alternate financial assurance in accordance with this Section.

d. Calculation of Costs to be Assured. The portion of the closure, post-closure, and corrective action costs for which an owner or operator can assure under Paragraph B.9 of this Section is determined as follows:

i. if the local government owner or operator does not assure other environmental obligations through a financial test, it may assure closure, post-closure, and corrective action costs that equal up to 43 percent of the local government's total annual revenue; or

ii. if the local government assures other environmental obligations through a financial test, including those associated with UIC facilities under 40 CFR 144.62, petroleum underground storage tank facilities under 40 CFR Part 280, PCB storage facilities under 40 CFR Part 761, and hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265, or corresponding state programs, it must add those costs to the closure, post-closure, and corrective action costs it seeks to assure under Paragraph B.9 of this Section, and the total that may be assured must not exceed 43 percent of the local government's total annual revenue; and

iii. the owner or operator must obtain an alternate financial assurance instrument for those costs that exceed the limits set in Clauses B.9.d.i-ii of this Section.

10. Local Government Guarantee. An owner or operator may demonstrate financial assurance for closure and post-closure, as required by Subsections A and B of this Section, by obtaining a written guarantee provided by a local government. The guarantor must meet the requirements of the local government financial test in Paragraph B.9 of this Section, and must comply with the terms of a written guarantee.

a. Terms of the Written Guarantee. The guarantee must be effective before the initial receipt of sewage sludge, other material, feedstock, or supplements or before the effective date of this Section, whichever is later, in the case of closure and post-closure care. The guarantee must provide that:

i. if the owner or operator fails to perform closure and post-closure care, of a facility covered by the guarantee, the guarantor will:

(a). perform, or pay a third party to perform, closure and post-closure care as required; or

(b). establish a fully funded trust fund as specified in Paragraph B.3 of this Section in the name of the owner or operator;

ii. the guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the Office of Environmental Services. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the administrative authority, as evidenced by the return receipts; and

iii. if a guarantee is canceled, the owner or operator must, within 90 days following receipt of the cancellation notice by the owner or operator and the administrative authority, obtain alternate financial assurance, place evidence of that alternate financial assurance in the facility operating record, and notify the Office of Environmental Services. If the owner or operator fails to provide alternate financial assurance within the 90-day period, then the guarantor must provide that alternate assurance within 120 days following the guarantor's notice of cancellation, place evidence of the alternate assurance in the facility operating record, and notify the Office of Environmental Services.

b. Recordkeeping and Reporting

i. The owner or operator must place a certified copy of the guarantee, along with the items required under Subparagraph B.9.c of this Section, into the facility's operating record before the initial receipt of sewage sludge, other material, feedstock, or supplements or before the effective date of this Section, whichever is later, in the case of closure or post-closure care.

ii. The owner or operator is no longer required to maintain the items specified in Clause B.10.b.i of this Section when:

(a). the owner or operator substitutes alternate financial assurance as specified in this Section; or

(b). the owner or operator is released from the requirements of this Section in accordance with Subsections A and B of this Section.

iii. If a local government guarantor no longer meets the requirements of Paragraph B.9 of this Section, the owner or operator must, within 90 days, obtain alternate assurance, place evidence of the alternate assurance in the facility operating record, and notify the Office of Environmental Services. If the owner or operator fails to obtain alternate financial assurance within that 90-day period, the guarantor must provide that alternate assurance within the next 30 days.

11. Use of Multiple Mechanisms. An owner or operator may demonstrate financial assurance for closure, post-closure, and corrective action, as required by Subsections A and B of this Section, by establishing more than one financial mechanism per facility, except that mechanisms guaranteeing performance, rather than payment, may not be combined with other instruments. The mechanisms must be as specified in Paragraphs B.3-8 of this Section, except that

financial assurance for an amount at least equal to the current cost estimate for closure, post-closure care, and/or corrective action may be provided by a combination of mechanisms, rather than a single mechanism.

12. Discounting. The administrative authority may allow discounting of closure and post-closure cost estimates in this Subsection up to the rate of return for essentially risk-free investments, net of inflation, under the following conditions:

a. the administrative authority determines that cost estimates are complete and accurate and the owner or operator has submitted a statement from a registered professional engineer to the Office of Environmental Services so stating;

b. the state finds the facility in compliance with applicable and appropriate permit conditions;

c. the administrative authority determines that the closure date is certain and the owner or operator certifies that there are no foreseeable factors that will change the estimate of site life; and

d. discounted cost estimates must be adjusted annually to reflect inflation and years of remaining life.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(1)(c) and (B)(3)(e).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:796 (April 2002), repromulgated LR 30:233 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2516 (October 2005), LR 33:2386 (November 2007).

**§7309. Pathogens and Vector Attraction Reduction**

**[Formerly §6909]**

A. Scope. This Section contains the following:

1. the requirements for a sewage sludge to be classified either as Exceptional Quality or Class B biosolids with respect to pathogens;

2. the site restrictions for land on which Class B biosolids are applied; and

3. the alternative vector attraction reduction requirements for biosolids that are applied to the land.

B. Special Definitions. In addition to the terms referenced and defined at LAC 33:IX.7301.B, the following definitions apply to this Section.

*Aerobic Digestion*—the biochemical decomposition of organic matter in sewage sludge into carbon dioxide and water by microorganisms in the presence of air.

*Anaerobic Digestion*—the biochemical decomposition of organic matter in sewage sludge into methane gas and carbon dioxide by microorganisms in the absence of air.

*Density of Microorganisms*—the number of microorganisms per unit mass of total solids (dry weight) in the sewage sludge.

*Land with a High Potential for Public Exposure*—land that the public uses frequently. This includes, but is not limited to, a public contact site and a reclamation site located in a populated area (e.g., a construction site located in a city).

*Land with a Low Potential for Public Exposure*—land that the public uses infrequently. This includes, but is not limited to, agricultural land, forest, and a reclamation site located in an unpopulated area (e.g., a strip mine located in a rural area).

*Pathogenic Organisms*—disease-causing organisms. These include, but are not limited to, certain bacteria, protozoa, viruses, and viable helminth ova.

*pH*—the logarithm of the reciprocal of the hydrogen ion concentration measured at 25°C or measured at another temperature and then converted to an equivalent value at 25°C.

*Specific Oxygen Uptake Rate (SOUR)*—the mass of oxygen consumed per unit time per unit mass of total solids (dry weight basis) in the sewage sludge.

*Total Solids*—the materials in sewage sludge that remain as residue when the sewage sludge is dried to a constant weight at 103° to 105°C.

*Unstabilized Solids*—organic materials in sewage sludge that have not been treated in either an aerobic or anaerobic treatment process.

*Vector Attraction*—the characteristic of sewage sludge that attracts rodents, flies, mosquitoes, or other organisms capable of transporting infectious agents.

*Volatile Solids*—the amount of the total solids in sewage sludge lost when the sewage sludge is combusted at 550°C in the presence of excess air.

### C. Pathogens

#### 1. Exceptional Quality Biosolids

a. The requirement in Subparagraph C.1.b of this Section, and the requirements in Subparagraph C.1.c, d, e, f, g, or h of this Section, must be met for biosolids classified as Exceptional Quality biosolids with respect to pathogens.

b. The Exceptional Quality biosolids pathogen requirements in Subparagraphs C.1.c-h of this Section must be met either prior to meeting or at the same time that the vector attraction reduction requirements in Subsection D of this Section, except the vector attraction reduction requirements in Subparagraphs D.2.d-e.ii of this Section, are met.

#### c. Exceptional Quality Biosolids—Alternative 1

i. Either the density of fecal coliform in the biosolids shall be less than 1000 Most Probable Number per gram of total solids (dry weight basis), or the density of *Salmonella sp.* bacteria in the biosolids shall be less than 3 Most Probable Number per 4 grams of total solids (dry weight basis) at the time the biosolids are used or disposed, at the time the biosolids are prepared for sale or to be given away in a bag or other container for application to the land, or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements of *Exceptional Quality biosolids*, as defined in LAC 33:IX.7301.B.

ii. The temperature of the sewage sludge that is used or disposed shall be maintained at a specific value for a period of time, as follows.

(a). When the percent solids of the sewage sludge is 7 percent or higher, the temperature of the sewage sludge shall be 50°C or higher, the time period shall be 20 minutes or longer, and the temperature and time period shall be determined using Equation (2), except when small particles of sewage sludge are heated by either warmed gases or an immiscible liquid.

$$D = \frac{131,700,000}{10^{0.140t}} \quad \text{Equation (2)}$$

where:

*D* = time in days

*t* = temperature in degrees Celsius

(b). When the percent solids of the sewage sludge is 7 percent or higher and small particles of sewage sludge are heated by either warmed gases or an immiscible liquid, the temperature of the sewage sludge shall be 50°C or higher, the time period shall be 15 seconds or longer, and the temperature and time period shall be determined using Equation (2).

(c). When the percent solids of the sewage sludge is less than 7 percent and the time period is at least 15 seconds, but less than 30 minutes, the temperature and time period shall be determined using Equation (2).

(d). When the percent solids of the sewage sludge is less than 7 percent, the temperature of the sewage sludge is 50°C or higher, and the time period is 30 minutes or longer, the temperature and time period shall be determined using Equation (3).

$$D = \frac{50,070,000}{10^{0.140t}} \quad \text{Equation (3)}$$

where:

*D* = time in days

*t* = temperature in degrees Celsius

#### d. Exceptional Quality Biosolids—Alternative 2

i. Either the density of fecal coliform in the biosolids shall be less than 1000 Most Probable Number per gram of total solids (dry weight basis), or the density of *Salmonella sp.* bacteria in the biosolids shall be less than 3 Most Probable Number per 4 grams of total solids (dry weight basis) at the time the biosolids are used or disposed, at the time the biosolids are prepared for sale or to be given away in a bag or other container for application to the land, or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements of *Exceptional Quality biosolids*, as defined in LAC 33:IX.7301.B.

#### ii. pH and Temperature Standards

(a). The pH of the sewage sludge that is used or disposed shall be raised to above 12 and shall remain above 12 for 72 hours.

(b). The temperature of the sewage sludge shall be above 52°C for 12 hours or longer during the period that the pH of the sewage sludge is above 12.

(c). At the end of the 72-hour period during which the pH of the sewage sludge is above 12, the sewage sludge shall be air dried to achieve a percent solids in the sewage sludge greater than 50 percent.

#### e. Exceptional Quality Biosolids—Alternative 3

i. Either the density of fecal coliform in the biosolids shall be less than 1000 Most Probable Number per gram of total solids (dry weight basis), or the density of *Salmonella sp.* bacteria in the biosolids shall be less than 3 Most Probable Number per 4 grams of total solids (dry weight basis) at the time the biosolids are used or disposed, at the time the biosolids are prepared for sale or to be given

away in a bag or other container for application to the land, or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements of *Exceptional Quality biosolids*, as defined in LAC 33:IX.7301.B.

ii. The sewage sludge shall be analyzed prior to pathogen treatment to determine whether the sewage sludge contains enteric viruses.

(a). When the density of enteric viruses in the sewage sludge prior to pathogen treatment is less than 1 Plaque-forming Unit per 4 grams of total solids (dry weight basis), the sewage sludge is *Exceptional Quality biosolids* with respect to enteric viruses until the next monitoring episode for the sewage sludge.

(b). When the density of enteric viruses in the sewage sludge prior to pathogen treatment is equal to or greater than 1 Plaque-forming Unit per 4 grams of total solids (dry weight basis), the sewage sludge is *Exceptional Quality biosolids* with respect to enteric viruses when the density of enteric viruses in the sewage sludge after pathogen treatment is less than 1 Plaque-forming Unit per 4 grams of total solids (dry weight basis) and when the values or ranges of values for the operating parameters for the pathogen treatment process that produces the sewage sludge that meets the enteric virus density requirement are documented.

(c). After the enteric virus reduction in Subclause C.1.e.ii.(b) of this Section is demonstrated for the pathogen treatment process, the sewage sludge continues to be *Exceptional Quality biosolids* with respect to enteric viruses when the values for the pathogen treatment process operating parameters are consistent with the values or ranges of values documented in Subclause C.1.e.ii.(b) of this Section.

iii. The sewage sludge shall be analyzed prior to pathogen treatment to determine whether the sewage sludge contains viable helminth ova.

(a). When the density of viable helminth ova in the sewage sludge prior to pathogen treatment is less than 1 per 4 grams of total solids (dry weight basis), the sewage sludge is *Exceptional Quality biosolids* with respect to viable helminth ova until the next monitoring episode for the sewage sludge.

(b). When the density of viable helminth ova in the sewage sludge prior to pathogen treatment is equal to or greater than 1 per 4 grams of total solids (dry weight basis), the sewage sludge is *Exceptional Quality biosolids* with respect to viable helminth ova when the density of viable helminth ova in the sewage sludge after pathogen treatment is less than 1 per 4 grams of total solids (dry weight basis) and when the values or ranges of values for the operating parameters for the pathogen treatment process that produces the sewage sludge that meets the viable helminth ova density requirement are documented.

(c). After the viable helminth ova reduction in Subclause C.1.e.iii.(b) of this Section is demonstrated for the pathogen treatment process, the sewage sludge continues to be *Exceptional Quality biosolids* with respect to viable helminth ova when the values for the pathogen treatment process operating parameters are consistent with the values or ranges of values documented in Subclause C.1.e.iii.(b) of this Section.

f. *Exceptional Quality Biosolids—Alternative 4*

i. Either the density of fecal coliform in the biosolids shall be less than 1000 Most Probable Number per gram of total solids (dry weight basis), or the density of *Salmonella sp.* bacteria in the biosolids shall be less than 3 Most Probable Number per 4 grams of total solids (dry weight basis) at the time the biosolids are used or disposed, at the time the biosolids are prepared for sale or to be given away in a bag or other container for application to the land, or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements of *Exceptional Quality biosolids*, as defined in LAC 33:IX.7301.B.

ii. The density of enteric viruses in the biosolids shall be less than 1 Plaque-forming Unit per 4 grams of total solids (dry weight basis) at the time the biosolids are used or disposed, at the time the biosolids are prepared for sale or to be given away in a bag or other container for application to the land, or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements in LAC 33:IX.7303.A.2.a and 3.a, unless otherwise specified by the permitting authority.

iii. The density of viable helminth ova in the biosolids shall be less than 1 per 4 grams of total solids (dry weight basis) at the time the biosolids are used or disposed, at the time the biosolids are prepared for sale or to be given away in a bag or other container for application to the land, or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements of *Exceptional Quality biosolids*, as defined in LAC 33:IX.7301.B.

g. *Exceptional Quality Biosolids—Alternative 5*

i. Either the density of fecal coliform in the biosolids shall be less than 1000 Most Probable Number per gram of total solids (dry weight basis), or the density of *Salmonella sp.* bacteria in the biosolids shall be less than 3 Most Probable Number per 4 grams of total solids (dry weight basis) at the time the biosolids are used or disposed, at the time the biosolids are prepared for sale or to be given away in a bag or other container for application to the land, or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements of *Exceptional Quality biosolids*, as defined in LAC 33:IX.7301.B.

ii. Sewage sludge that is used or disposed shall be treated in one of the Processes to Further Reduce Pathogens described in LAC 33:IX.7399.Appendix B.

h. *Exceptional Quality Biosolids—Alternative 6*

i. Either the density of fecal coliform in the biosolids shall be less than 1000 Most Probable Number per gram of total solids (dry weight basis), or the density of *Salmonella sp.* bacteria in the biosolids shall be less than 3 Most Probable Number per 4 grams of total solids (dry weight basis) at the time the biosolids are used or disposed, at the time the biosolids are prepared for sale or to be given away in a bag or other container for application to the land, or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements of *Exceptional Quality biosolids*, as defined in LAC 33:IX.7301.B.

ii. Sewage sludge that is used or disposed shall be treated in a process that is equivalent to a Process to Further

Reduce Pathogens that has been approved by the Environmental Protection Agency's (EPA's) Pathogen Equivalency Committee.

iii. Requests for approval of alternative innovative processes, as a process that is equivalent to a Process to Further Reduce Pathogens, that have not yet been approved by the EPA's Pathogen Equivalency Committee shall initially be submitted to the administrative authority. The administrative authority shall then work with the EPA's Pathogen Equivalency Committee on the proper procedures for EPA's review of the request.

## 2. Class B Biosolids

a. The requirements in Subparagraph C.2.b, c, or d of this Section must be met for biosolids classified as Class B biosolids with respect to pathogens. The site restrictions in Subparagraph C.2.e of this Section must be met when biosolids that meet the Class B biosolids pathogen requirements in Subparagraph C.2.b, c, or d of this Section are applied to the land.

### b. Class B Biosolids—Alternative 1

i. Seven representative samples of the biosolids that are used or disposed shall be collected.

ii. The geometric mean of the density of fecal coliform in the samples required by Clause C.2.b.i of this Section shall be less than either 2,000,000 Most Probable Number per gram of total solids (dry weight basis) or 2,000,000 Colony Forming Units per gram of total solids (dry weight basis).

c. Class B Biosolids—Alternative 2. Biosolids that are used or disposed shall be treated in one of the Processes to Significantly Reduce Pathogens described in LAC 33:IX.7399.Appendix L.

d. Class B Biosolids—Alternative 3. Biosolids that are used or disposed shall be treated in a process that is equivalent to a Process to Significantly Reduce Pathogens that has been approved by the EPA's Pathogen Equivalency Committee. Requests for approval of alternative innovative processes, as a process that is equivalent to a Process to Further Reduce Pathogens, that have not yet been approved by the EPA's Pathogen Equivalency Committee shall initially be submitted to the administrative authority. The administrative authority shall then work with the EPA's Pathogen Equivalency Committee on the proper procedures for EPA's review of the request.

### e. Site Restrictions

i. Food crops with harvested parts that touch the biosolids/soil mixture and are totally above the land surface shall not be harvested for 14 months after application of biosolids.

ii. Food crops with harvested parts below the surface of the land shall not be harvested for 20 months after application of biosolids when the biosolids remain on the land surface for four months or longer prior to incorporation into the soil.

iii. Food crops with harvested parts below the surface of the land shall not be harvested for 38 months after application of biosolids when the biosolids remain on the land surface for less than four months prior to incorporation into the soil.

iv. Food crops, feed crops, and fiber crops shall not be harvested for 30 days after application of biosolids.

v. Animals shall not be grazed on the land for 30 days after application of biosolids.

vi. Turf grown on land where biosolids are applied shall not be harvested for one year after application of the biosolids when the harvested turf is placed on either land with a high potential for public exposure or a lawn, unless otherwise specified by the permitting authority.

vii. Public access to land with a high potential for public exposure shall be restricted for one year after application of biosolids, by means approved by the administrative authority.

viii. Public access to land with a low potential for public exposure shall be restricted for 30 days after application of biosolids, by means approved by the administrative authority.

## D. Vector Attraction Reduction

### 1. Land Application Requirements

a. One of the vector attraction reduction requirements in Subparagraphs D.2.a-j of this Section shall be met when bulk biosolids are applied to agricultural land, forest, a public contact site, or a reclamation site.

b. One of the vector attraction reduction requirements in Subparagraphs D.2.a-h of this Section shall be met when bulk biosolids are applied to a lawn or a home garden.

c. One of the vector attraction reduction requirements in Subparagraphs D.2.a-h of this Section shall be met when biosolids are sold or given away in a bag or other container for application to the land.

### 2. Procedures to Attain Vector Attraction Reduction for Land Application

#### a. Volatile Solids Reduction

i. The mass of volatile solids in the biosolids shall be reduced by a minimum of 38 percent (see calculation procedures in *Environmental Regulations and Technology—Control of Pathogens and Vector Attraction in Sewage Sludge*, EPA-625/R-92/013, 1992, U.S. Environmental Protection Agency, Cincinnati, Ohio 45268).

ii. When the 38 percent volatile solids reduction requirement in Clause D.2.a.i of this Section cannot be met for an anaerobically digested sewage sludge, vector attraction reduction can be demonstrated by digesting a portion of the previously digested sewage sludge anaerobically in the laboratory in a bench-scale unit for 40 additional days at a temperature between 30° and 37°C. When, at the end of the 40 days, the volatile solids in the sewage sludge at the beginning of that period is reduced by less than 17 percent, vector attraction reduction is achieved.

iii. When the 38 percent volatile solids reduction requirement in Clause D.2.a.i of this Section cannot be met for an aerobically digested sewage sludge, vector attraction reduction can be demonstrated by digesting a portion of the previously digested sewage sludge that has a percent solids of 2 percent or less aerobically in the laboratory in a bench-scale unit for 30 additional days at 20°C. When at the end of the 30 days, the volatile solids in the sewage sludge at the beginning of that period is reduced by less than 15 percent, vector attraction reduction is achieved.

b. Specific Oxygen Uptake Rate (SOUR). The specific oxygen uptake rate (SOUR) for sewage sludge treated in an aerobic process shall be equal to or less than 1.5

milligrams of oxygen per hour per gram of total solids (dry weight basis) at a temperature of 20°C.

c. **Aerobic Treatment.** Sewage sludge shall be treated in an aerobic process for 14 days or longer. During that time, the temperature of the sewage sludge shall be higher than 40°C and the average temperature of the sewage sludge shall be higher than 45°C.

d. **Alkaline Treatment.** The pH of sewage sludge shall be raised to 12 or higher by alkali addition and, without the addition of more alkali, shall remain at 12 or higher for two hours and then at 11.5 or higher for an additional 22 hours.

e. **Percent Solids.** In order to attain vector attraction reduction through percent solids, either of the following must be met:

i. the percent solids of sewage sludge that does not contain unstabilized solids generated in a primary wastewater treatment process shall be equal to or greater than 75 percent based on the moisture content and total solids prior to mixing with other materials; or

ii. the percent solids of sewage sludge that does contain unstabilized solids generated in a primary wastewater treatment process shall be equal to or greater than 90 percent based on the moisture content and total solids prior to mixing with other materials.

f. **Injection of Biosolids**

i. Biosolids shall be injected below the surface of the land.

ii. No significant amount of biosolids shall be present on the land surface within one hour after the biosolids are injected.

iii. When the biosolids that are injected below the surface of the land are Exceptional Quality biosolids with respect to pathogens, the biosolids shall be injected below the land surface within eight hours after being discharged from the pathogen treatment process.

g. **Incorporation of Biosolids**

i. Biosolids applied to the land surface shall be incorporated into the soil within six hours after application to the land, unless otherwise specified by the permitting authority.

ii. When biosolids that are incorporated into the soil are Exceptional Quality biosolids with respect to pathogens, the biosolids shall be applied to the land within eight hours after being discharged from the pathogen treatment process.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2074(B)(1)(c) and (B)(3)(e).

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:806 (April 2002), repromulgated LR 30:233 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2395 (November 2007).

### **§7311. Incineration [Formerly §6911]**

#### **A. Applicability**

1. This Section applies to a person who fires only sewage sludge or sewage sludge and *auxiliary fuel*, as defined in Subsection B of this Section, in a sewage sludge incinerator; to a *sewage sludge incinerator*, as defined in Subsection B of this Section; and to sewage sludge or sewage sludge and auxiliary fuel fired in a sewage sludge incinerator.

2. This Section applies to the exit gas from a sewage sludge incinerator stack.

**B. Special Definitions.** All terms not defined below shall have the meaning given them in LAC 33:IX.7301.B and in LAC 33:III.111.

*Air Pollution Control Device*—one or more processes used to treat the exit gas from a sewage sludge incinerator stack.

*Auxiliary Fuel*—fuel used to augment the fuel value of sewage sludge. This includes, but is not limited to, natural gas, fuel oil, coal, gas generated during anaerobic digestion of sewage sludge, and municipal solid waste (not to exceed 30 percent of the dry weight of sewage sludge and auxiliary fuel together). Hazardous wastes are not auxiliary fuel.

*Average Daily Concentration*—the arithmetic mean of the concentration of a pollutant in milligrams per kilogram of sewage sludge (dry weight basis) in the samples collected and analyzed in a month.

*Control Efficiency*—the mass of a pollutant in the sewage sludge fed to an incinerator minus the mass of that pollutant in the exit gas from the incinerator stack divided by the mass of the pollutant in the sewage sludge fed to the incinerator.

*Dispersion Factor*—the ratio of the increase in the ground level ambient air concentration for a pollutant at or beyond the property line of the site where the sewage sludge incinerator is located to the mass emission rate for the pollutant from the incinerator stack.

*Fluidized Bed Incinerator*—an enclosed device in which organic matter and inorganic matter in sewage sludge are combusted in a bed of particles suspended in the combustion chamber gas.

*Hourly Average*—the arithmetic mean of all measurements, taken during an hour. At least two measurements must be taken during the hour.

*Incineration*—the combustion of organic matter and inorganic matter in sewage sludge by high temperatures in an enclosed device.

*Incinerator Operating Combustion Temperature*—the arithmetic mean of the temperature readings in the hottest zone of the furnace recorded in a day (24 hours) when the temperature is averaged and recorded at least hourly during the hours the incinerator operates in a day.

*Monthly Average*—the arithmetic mean of the hourly averages for the hours a sewage sludge incinerator operates during the month.

*Performance Test Combustion Temperature*—the arithmetic mean of the average combustion temperature in the hottest zone of the furnace for each of the runs in a performance test.

*Risk Specific Concentration*—the allowable increase in the average daily ground level ambient air concentration for a pollutant from the incineration of sewage sludge at or beyond the property line of the site where the sewage sludge incinerator is located.

*Sewage Sludge Feed Rate*—either the average daily amount of sewage sludge fired in all sewage sludge incinerators within the property line of the site where the sewage sludge incinerators are located for the number of days in a 365-day period that each sewage sludge incinerator operates, or the average daily design capacity for all sewage

sludge incinerators within the property line of the site where the sewage sludge incinerators are located.

*Sewage Sludge Incinerator*—an enclosed device in which only sewage sludge or sewage sludge and auxiliary fuel are fired.

*Stack Height*—the difference between the elevation of the top of a sewage sludge incinerator stack and the elevation of the ground at the base of the stack when the difference is equal to or less than 214 feet (65 meters). When the difference is greater than 214 feet (65 meters), stack height is the creditable stack height determined in accordance with LAC 33:III.921.

*Standard*—a standard of performance proposed or promulgated under this Chapter.

*Stationary Source*—any building, structure, facility, or installation that emits or may emit any air pollutant.

*Total Hydrocarbons*—the organic compounds in the exit gas from a sewage sludge incinerator stack measured using a flame ionization detection instrument referenced to propane.

*Wet Electrostatic Precipitator*—an air pollution control device that uses both electrical forces and water to remove pollutants in the exit gas from a sewage sludge incinerator stack.

*Wet Scrubber*—an air pollution control device that uses water to remove pollutants in the exit gas from a sewage sludge incinerator stack.

### C. General Requirements

1. No person shall fire sewage sludge or sewage sludge and auxiliary fuel in a sewage sludge incinerator except in compliance with the requirements in this Section.

#### 2. Performance Tests for New Stationary Sources

a. Within 60 days after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after initial start-up of such facility and at such other times as may be required by the administrative authority, the owner or operator of such facility shall conduct performance test(s) and furnish the administrative authority a written report of the results of such performance test(s).

b. Performance tests shall be conducted and data reduced in accordance with the test methods and procedures contained for each applicable requirement in Subsections D, E, and F of this Section, unless the administrative authority:

i. specifies or approves, in specific cases, the use of a reference method with minor changes in methodology;

ii. approves the use of an equivalent method;

iii. approves the use of an alternative method the results of which have been determined by the administrative authority to be adequate for indicating whether a specific source is in compliance;

iv. waives the requirement for performance tests because the owner or operator of a source has demonstrated by other means, to the administrative authority's satisfaction, that the affected facility is in compliance with the standard; or

v. approves shorter sampling times and smaller sample volumes when necessitated by process variables or other factors. Nothing in this Subparagraph shall be construed to abrogate the administrative authority's right to require additional testing if deemed necessary for proper determination of the standard of performance of the new stationary source.

c. Performance tests shall be conducted under such conditions as the administrative authority shall specify to the plant operator based on representative performance of the affected facility. The owner or operator shall make available to the administrative authority such records as may be necessary to determine the conditions of the performance tests. Operations during periods of start-up, shutdown, and malfunction shall not constitute representative conditions for the purpose of a performance test nor shall emissions in excess of the level of the applicable emission limit during periods of start-up, shutdown, and malfunction be considered a violation of the applicable emission limit unless otherwise specified in the applicable standard.

d. The owner or operator of an affected facility shall provide the administrative authority at least 30 days prior notice of any performance test, except as otherwise specified in this Subsection, to afford the administrative authority the opportunity to have an observer present. If after 30 days notice for an initially scheduled performance test, there is a delay (due to operational problems, etc.) in conducting the scheduled performance test, the owner or operator of an affected facility shall notify the administrative authority as soon as possible of any delay in the original test date either by providing at least seven days prior notice of the rescheduled date of the performance test or by arranging a rescheduled date with the administrative authority by mutual agreement.

e. The owner or operator of an affected facility shall provide, or cause to be provided, performance testing facilities as follows:

i. sampling ports adequate for test methods applicable to such facility, including:

(a). constructing the air pollution control system such that volumetric flow rates and pollutant emission rates can be accurately determined by applicable test methods and procedures; and

(b). providing a stack or duct free of cyclonic flow during performance tests, as demonstrated by applicable test methods and procedures;

ii. safe sampling platform(s);

iii. safe access to sampling platform(s); and

iv. utilities for sampling and testing equipment.

f. Unless otherwise specified in the applicable parts of this Paragraph, each performance test shall consist of three separate runs using the applicable test method. Each run shall be conducted for the time and under the conditions specified in the applicable standard. For the purpose of determining compliance with an applicable standard, the arithmetic means of results of the three runs shall apply. In the event that a sample is accidentally lost or conditions occur in which one of the three runs must be discontinued because of forced shutdown, failure of an irreplaceable portion of the sample train, extreme meteorological conditions, or other circumstances beyond the owner's or operator's control, compliance may, upon the administrative authority's approval, be determined using the arithmetic mean of the results of the two other runs.

3. In conducting the performance tests required in Paragraph C.2 of this Section, the owner or operator shall use as reference methods and procedures the test methods referenced in LAC 33:IX.7301.I or other methods and

procedures as specified in this Section, except as provided for in Subparagraph C.2.b of this Section.

4. The owner or operator of any sewage sludge incinerator subject to the provisions of this Chapter shall conduct a performance test during which the monitoring and recording devices required under Paragraphs F.2, 4, and 6, Subparagraph F.8.a, and Paragraph F.9 of this Section are installed and operating and for which the sampling and analysis procedures required under Subparagraph G.1.d of this Section are performed as follows.

a. For incinerators that commenced construction or modification:

i. on or before April 18, 1986, the performance test shall be conducted within 360 days of the effective date of these regulations, unless the monitoring and recording devices required under Paragraphs F.2, 4, and 6, Subparagraph F.8.a, and Paragraph F.9 of this Section were installed and operating and the sampling and analysis procedures required under Subparagraph G.1.d of this Section were performed during the most recent performance test and a record of the measurements taken during the performance test is available for review by the administrative authority; and

ii. on or after the effective date of these regulations, the date of the performance test shall be determined by the requirements in Paragraph C.2 of this Section.

b. The owner or operator shall provide the administrative authority at least 30 days prior notice of the performance test to afford the administrative authority the opportunity to have an observer present.

5. The owner or operator of any sewage sludge incinerator, other than a multiple hearth, fluidized bed, or electric incinerator or any sewage sludge incinerator equipped with a control device other than a wet scrubber, shall submit a plan to the administrative authority for approval for monitoring and recording incinerator and control device operation parameters. The plan shall be submitted to the administrative authority as follows:

a. no later than 90 days after October 6, 1988, for sources that have provided notification of commencement of construction prior to October 6, 1988;

b. no later than 90 days after the notification of commencement of construction, for sources that provide notification of commencement of construction on or after October 6, 1988; and

c. at least 90 days prior to the date on which the new control device becomes operative for sources switching to a control device other than a wet scrubber.

**D. Pollutant Limits**

1. Firing of sewage sludge in a sewage sludge incinerator shall not violate the requirements in the national emission standard for beryllium in Subpart C of 40 CFR Part 61 (as incorporated by reference at LAC 33:III.5116).

2. Firing of sewage sludge in a sewage sludge incinerator shall not violate the requirements in the national emission standard for mercury in Subpart E of 40 CFR Part 61 (as incorporated by reference at LAC 33:III.5116).

**3. Pollutant Limit—Lead**

a. The average daily concentration for lead in sewage sludge fed to a sewage sludge incinerator shall not exceed the concentration calculated using Equation (4).

$$C = \frac{0.1 \times NAAQS \times 86,400}{DF \times (1 - CE) \times SF} \quad \text{Equation (4)}$$

where:

- C = average daily concentration of lead in sewage sludge
- NAAQS = National Ambient Air Quality Standard for lead in micrograms per cubic meter
- DF = dispersion factor in micrograms per cubic meter per gram per second
- CE = sewage sludge incinerator control efficiency for lead in hundredths
- SF = sewage sludge feed rate in metric tons per day (dry weight basis)

b. The dispersion factor (DF) in Equation (4) shall be determined from an air dispersion model in accordance with Paragraph D.5 of this Section.

i. When the sewage sludge stack height is 214 feet (65 meters) or less, the actual sewage sludge incinerator stack height shall be used in the air dispersion model to determine the dispersion factor (DF) for Equation (4).

ii. When the sewage sludge incinerator stack height exceeds 214 feet (65 meters), the creditable stack height shall be determined in accordance with LAC 33:III.921, and the creditable stack height shall be used in the air dispersion model to determine the dispersion factor (DF) for Equation (4).

c. The control efficiency (CE) for Equation (4) shall be determined from a performance test of the sewage sludge incinerator in accordance with Paragraph D.5 of this Section.

**4. Pollutant Limit—Arsenic, Cadmium, Chromium, and Nickel**

a. The average daily concentration for arsenic, cadmium, chromium, and nickel in sewage sludge fed to a sewage sludge incinerator each shall not exceed the concentration calculated using Equation (5).

$$C = \frac{RSC \times 86,400}{DF \times (1 - CE) \times SF} \quad \text{Equation (5)}$$

where:

- C = average daily concentration of arsenic, cadmium, chromium, or nickel in sewage sludge
- CE = sewage sludge incinerator control efficiency for arsenic, cadmium, chromium, or nickel in hundredths
- DF = dispersion factor in micrograms per cubic meter per gram per second
- RSC = risk-specific concentration for arsenic, cadmium, chromium, or nickel in micrograms per cubic meter
- SF = sewage sludge feed rate in metric tons per day (dry weight basis)

b. The risk-specific concentrations for arsenic, cadmium, and nickel used in Equation (5) shall be obtained from Table 1 of LAC 33:IX.7311.D.

Table 1 of LAC 33:IX.7311.D	
Risk-Specific Concentration for Arsenic, Cadmium, and Nickel	
Pollutant	Risk-Specific Concentration (micrograms per cubic meter)
Arsenic	0.023
Cadmium	0.057
Nickel	2.0

c. The risk-specific concentration for chromium used in Equation (5) shall be obtained from Table 2 of LAC 33:IX.7311.D or shall be calculated using Equation (6).

Table 2 of LAC 33:IX.7311.D	
Risk-Specific Concentration For Chromium	
Type of Incinerator	Risk-Specific Concentration (micrograms per cubic meter)
Fluidized bed with wet scrubber	0.65
Fluidized bed with wet scrubber and wet electrostatic precipitator	0.23
Other types with wet scrubber	0.064
Other types with wet scrubber and wet electrostatic precipitator	0.016

$$RSC = \frac{0.0085}{r} \quad \text{Equation (6)}$$

where:

RSC = risk-specific concentration for chromium in micrograms per cubic meter used in Equation (5)

r = decimal fraction of the hexavalent chromium concentration in the total chromium concentration measured in the exit gas from the sewage sludge incinerator stack in hundredths

d. The dispersion factor (DF) in Equation (5) shall be determined from an air dispersion model in accordance with Paragraph D.5 of this Section.

i. When the sewage sludge incinerator stack height is equal to or less than 214 feet (65 meters), the actual sewage sludge incinerator stack height shall be used in the air dispersion model to determine the dispersion factor (DF) for Equation (5).

ii. When the sewage sludge incinerator stack height is greater than 214 feet (65 meters), the creditable stack height shall be determined in accordance with LAC 33:III.921 and the creditable stack height shall be used in the air dispersion model to determine the dispersion factor (DF) for Equation (5).

e. The control efficiency (CE) for Equation (5) shall be determined from a performance test of the sewage sludge incinerator in accordance with Paragraph D.5 of this Section.

#### 5. Air Dispersion Modeling and Performance Testing

a. The air dispersion model used to determine the dispersion factor in Subparagraphs D.3.b and 4.d of this Section shall be appropriate for the geographical, physical, and population characteristics at the sewage sludge incinerator site. The performance test used to determine the control efficiencies in Subparagraphs D.3.c and 4.e of this Section shall be appropriate for the type of sewage sludge incinerator.

b. For air dispersion modeling initiated after September 3, 1999, the modeling results shall be submitted to the administrative authority 30 days after completion of the modeling. In addition to the modeling results, the submission shall include a description of the air dispersion model and the values used for the model parameters.

c. The following procedures, at a minimum, shall apply in conducting performance tests to determine the control efficiencies in Subparagraphs D.3.c and 4.e of this Section after September 3, 1999:

i. the performance test shall be conducted under representative sewage sludge incinerator conditions at the highest expected sewage sludge feed rate within the design capacity of the sewage sludge incinerator;

ii. the administrative authority shall be notified at least 30 days prior to any performance test so the administrative authority may have the opportunity to observe the test. The notice shall include a test protocol with

incinerator operating conditions and a list of test methods to be used; and

iii. each performance test shall consist of three separate runs using the applicable test method. The control efficiency for a pollutant shall be the arithmetic mean of the control efficiencies for the pollutant from the three runs.

d. The pollutant limits in Paragraphs D.3 and 4 of this Section shall be submitted to the administrative authority no later than 30 days after completion of the air dispersion modeling and performance test.

e. Significant changes in geographic or physical characteristics at the incinerator site or in incinerator operating conditions require new air dispersion modeling or performance testing to determine a new dispersion factor or a new control efficiency that will be used to calculate revised pollutant limits.

#### 6. Standards for Particulate Matter

a. No owner or operator of any sewage sludge incinerator subject to the provisions of this Section shall discharge or cause the discharge into the atmosphere of:

i. particulate matter at a rate in excess of 0.65 g/kg dry sewage sludge input (1.30 lb/ton dry sewage sludge input); and

ii. any gases that exhibit 20 percent opacity or greater.

b. The owner or operator of a sewage sludge incinerator shall determine compliance with the particulate matter emission standards in Subparagraph D.6.a of this Section as follows:

i. the emission rate (E) of particulate matter for each run shall be computed using the following equation:

$$E = (C_s Q_{sd}) / KS$$

where:

E = emission rate of particulate matter, g/kg (lb/ton) of dry sewage sludge input

C<sub>s</sub> = concentration of particulate matter, g/dscm (g/dscf)

Q<sub>sd</sub> = volumetric flow rate of effluent gas, dscm/hr (dscf/hr)

S = charging rate of dry sewage sludge during the run, kg/hr (lb/hr)

K = conversion factor, 1.0 g/g [4.409 lb<sup>2</sup>/(g-ton)]

ii. Method 5 (40 CFR Part 60, Appendix A-3, incorporated by reference in LAC 33:III.3003) shall be used to determine the particulate matter concentration (C<sub>s</sub>) and the volumetric flow rate (Q<sub>sd</sub>) of the effluent gas. The sampling time and sample volume for each run shall be at least 60 minutes and 0.90 dscm (31.8 dscf);

iii. the dry sewage sludge charging rate (S) for each run shall be computed using either of the following equations:

$$S = K_m S_m R_{dm} / \Theta$$

$$S = K_v S_v R_{dv} / \Theta$$

where:

S = charging rate of dry sewage sludge, kg/hr (lb/hr)

S<sub>m</sub> = total mass of sewage sludge charged, kg (lb)

R<sub>dm</sub> = average mass of dry sewage sludge per unit mass of sludge charged, mg/mg (lb/lb)

Θ = duration of run, in minutes

K<sub>m</sub> = conversion factor, 60 min/hr

S<sub>v</sub> = total volume of sewage sludge charged, m<sup>3</sup> (gal)

R<sub>dv</sub> = average mass of dry sewage sludge per unit volume of sewage charged, mg/Liter (lb/ft<sup>3</sup>)

K<sub>v</sub> = conversion factor, 60 X 10<sup>-3</sup> (liter-kg-min)/(m<sup>3</sup>-mg-hr) [8.021 (ft<sup>3</sup>-min)/(gal-hr)]

iv. the flow measuring device of Paragraph F.2 of this Section shall be used to determine the total mass ( $S_m$ ) or volume ( $S_v$ ) of sewage sludge charged to the incinerator during each run. If the flow measuring device is on a time rate basis, readings shall be taken and recorded at 5-minute intervals during the run and the total charge of sewage sludge shall be computed using the following equations, as applicable:

$$S_m = \sum_{i=1}^n Q_{mi} / \Theta_i$$

$$S_v = \sum_{i=1}^n Q_{vi} / \Theta_i$$

where:

$Q_{mi}$  = average mass flow rate calculated by averaging the flow rates at the beginning and end of each interval "i", kg/min (gal/min)

$Q_{vi}$  = average volume flow rate calculated by averaging the flow rates at the beginning and end of each interval "i", m<sup>3</sup>/min (gal/min)

$\Theta_i$  = duration of interval "i", min

v. samples of the sewage sludge charged to the incinerator shall be collected in nonporous jars at the beginning of each run and at approximately 1-hour intervals thereafter until the test ends, and Part 2540, G. Total, Fixed, and Volatile Solids in Solid and Semisolid Samples (the test method indicated in LAC 33:IX.7301.I.2.g) shall be used to determine dry sewage sludge content of each sample (total solids residue), except that:

(a). evaporating dishes shall be ignited to at least 103°C rather than the 550°C specified in Step 3(a)(1);

(b). determination of volatile residue, Step 3(b) may be deleted;

(c). the quantity of dry sewage sludge per unit sewage sludge charged shall be determined in terms of mg/Liter (lb/ft<sup>3</sup>) or mg/mg (lb/lb); and

(d). the average dry sewage sludge content shall be the arithmetic average of all the samples taken during the run; and

vi. Method 9 (40 CFR 60, Appendix A-4, incorporated by reference in LAC 33:III.3003) shall be used to determine opacity.

#### E. Operational Standard—Total Hydrocarbons

1. The total hydrocarbons concentration in the exit gas from a sewage sludge incinerator shall be corrected for 0 percent moisture by multiplying the measured total hydrocarbons concentration by the correction factor calculated using Equation (7).

$$\text{Correction factor (percent moisture)} = \frac{1}{(1 - X)} \quad \text{Equation (7)}$$

where:

X = decimal fraction of the percent moisture in the sewage sludge incinerator exit gas in hundredths

2. The total hydrocarbons concentration in the exit gas from a sewage sludge incinerator shall be corrected to 7 percent oxygen by multiplying the measured total hydrocarbons concentration by the correction factor calculated using Equation (8).

$$\text{Correction factor (oxygen)} = \frac{14}{(21 - Y)} \quad \text{Equation (8)}$$

where:

Y = percent oxygen concentration in the sewage sludge incinerator stack exit gas (dry volume/dry volume)

3. The monthly average concentration for total hydrocarbons in the exit gas from a sewage sludge incinerator stack, corrected for 0 percent moisture using the correction factor from Equation (7) and to 7 percent oxygen using the correction factor from Equation (8), shall not exceed 100 parts per million on a volumetric basis when measured using the instrument required by Paragraph F.5 of this Section.

#### F. Management Practices

1. The owner or operator of a sewage sludge incinerator shall provide access to the sewage sludge charged so that a well-mixed representative grab sample of the sewage sludge can be obtained.

2. A flow measuring device that can be used to determine either the mass or volume of sewage sludge charged to the incinerator shall be installed, calibrated, maintained, and properly operated.

a. The flow measuring device shall be certified by the manufacturer to have an accuracy of ±5 percent over its operating range.

b. The flow measuring device shall be operated continuously and data recorded during all periods of operation of the incinerator, unless the administrative authority specifies otherwise.

3. A weighing device for determining the mass of any municipal solid waste charged to the incinerator when sewage sludge and municipal solid waste are incinerated together shall be installed, calibrated, maintained, and properly operated. The weighing device shall have an accuracy of ±5 percent over its operating range.

4. For incinerators equipped with a wet scrubbing device, a monitoring device that continuously measures and records the pressure drop of the gas flow through the wet scrubbing device shall be installed, calibrated, maintained, and properly operated.

a. Where a combination of wet scrubbers is used in series, the pressure drop of the gas flow through the combined system shall be continuously monitored.

b. The device used to monitor scrubber pressure drop shall be certified by the manufacturer to be accurate within ±250 pascals (±1 inch water gauge) and shall be calibrated on an annual basis in accordance with the manufacturer's instructions.

5. An instrument that continuously measures and records the total hydrocarbons concentration in the sewage sludge incinerator stack exit gas shall be installed, calibrated, operated, and maintained for a sewage sludge incinerator. The total hydrocarbons instrument shall employ a flame ionization detector, have a heated sampling line maintained at a temperature of 150°C or higher at all times, and be calibrated at least once every 24-hour operating period using propane.

6. An instrument that continuously measures and records the oxygen concentration in the sewage sludge incinerator stack exit gas shall be installed, calibrated, operated, and maintained for a sewage sludge incinerator.

a. The oxygen monitoring device shall be located upstream of any rabble shaft cooling air inlet into the incinerator exhaust gas stream, fan, ambient air recirculation damper, or any other source of dilution air.

b. The oxygen monitoring device shall be certified by the manufacturer to have a relative accuracy of ±5

percent over its operating range and shall be calibrated according to method(s) prescribed by the manufacturer at least once each 24-hour operating period.

7. An instrument that continuously measures and records information used to determine the moisture content in the sewage sludge incinerator stack exit gas shall be installed, calibrated, operated, and maintained for a sewage sludge incinerator.

8. An instrument that continuously records combustion temperature at every hearth in multiple hearth furnaces, in the bed and outlet of fluidized bed incinerators, and in the drying, combustion, and cooling zones of electric incinerators shall be installed, calibrated, maintained, and properly operated.

a. For multiple hearth furnaces, a minimum of one thermocouple shall be installed in each hearth in the cooling and drying zones, and a minimum of two thermocouples shall be installed in each hearth in the combustion zone.

b. For electric incinerators, a minimum of one thermocouple shall be installed in the drying zone and one in the cooling zone, and a minimum of two thermocouples shall be installed in the combustion zone.

c. Each temperature measuring device shall be certified by the manufacturer to have an accuracy of  $\pm 5$  percent over its operating range.

d. Operation of a sewage sludge incinerator shall not cause the operating combustion temperature for the sewage sludge incinerator to exceed the performance test combustion temperature by more than 20 percent.

9. A device for measuring the fuel flow to the incinerator shall be installed, calibrated, maintained, and properly operated.

a. The fuel flow measuring device shall be certified by the manufacturer to have an accuracy of  $\pm 5$  percent over its operating range.

b. The fuel flow measuring device shall be operated continuously and data recorded during all periods of operation of the incinerator, unless the administrative authority specifies otherwise.

10. An air pollution control device shall:

a. be appropriate for the type of sewage sludge incinerator, and the operating parameters for the air pollution control device shall be adequate to indicate proper performance of the air pollution control device; and

b. be operated so as not to cause a significant exceedance of the average value for the air pollution control device operating parameters from the performance test required by Subparagraphs D.3.c and 4.e of this Section, nor shall the operation of the air pollution control device violate any other requirements of this Section to which the air pollution control device is subjected.

11. The permittee shall collect and analyze sewage sludge fed to a sewage sludge incinerator for dry sludge content and volatile solids content using the method specified at Clause D.6.b.v of this Section, except that the determination of volatile solids, Step (3)(b) of the method, shall not be deleted.

12. Sewage sludge shall not be fired in a sewage sludge incinerator if it is likely to adversely affect a threatened or endangered species listed under Section 4 of the Endangered Species Act, or its designated critical habitat.

13. The instruments required in Paragraphs F.2-9 of this Section shall be appropriate for the type of sewage sludge incinerator.

14. The administrative authority may exempt the owner or operator of any multiple hearth, fluidized bed, or electric sewage sludge incinerator from the daily sampling and analysis of sludge feed requirements in Paragraph F.11 and Subparagraph G.1.d of this Section and from the recordkeeping requirement in Subparagraph H.2.p of this Section for the volatile solids content, only, of the sewage sludge charged to the incinerator during all periods of this incinerator following the performance test if:

a. the particulate matter emission rate measured during the performance test required under Paragraph C.4 of this Section is less than or equal to 0.38 g/kg of dry sewage sludge input (0.75 lb/ton); and

b. the administrative authority determines that the requirements will not be necessary to evaluate the effects upon the environment and human health resulting from the emissions from the sewage sludge incinerator.

G. Frequency of Monitoring. Except as specified otherwise in this Section, the frequency of monitoring shall be as follows.

1. Sewage Sludge

a. The frequency of monitoring for beryllium shall be as required in Subpart C of 40 CFR Part 61 (as incorporated by reference in LAC 33:III.5116), and for mercury as required in Subpart E of 40 CFR Part 61 (as incorporated by reference in LAC 33:III.5116).

b. The frequency of monitoring for arsenic, cadmium, chromium, lead, and nickel in sewage sludge fed to a sewage sludge incinerator shall be the frequency in Table 1 of LAC 33:IX.7311.G.

Table 1 of LAC 33:IX.7311.G	
Frequency of Monitoring—Incineration	
Amount of Sewage Sludge <sup>1</sup> (metric tons per 365-day period)	Frequency
Greater than zero but less than 290	Once per year
Equal to or greater than 290 but less than 1,500	Once per quarter (4 times per year)
Equal to or greater than 1,500 but less than 15,000	Once per 60 days (6 times per year)
Equal to or greater than 15,000	Once per month (12 times per year)

<sup>1</sup>Amount of sewage sludge fired in a sewage sludge incinerator (dry weight basis)

c. After the sewage sludge has been monitored for two years at the frequency in Table 1 of LAC 33:IX.7311.G, the administrative authority may reduce the frequency of monitoring for arsenic, cadmium, chromium, lead, and nickel.

d. The frequency of monitoring for dry sewage sludge content and volatile solids content of the sewage sludge shall be once per day, as a grab sample of the sewage sludge fed to the incinerator.

2. Total Hydrocarbons, Oxygen Concentration, Moisture Content, and Combustion Temperatures. The total hydrocarbons concentration and oxygen concentration in the exit gas from a sewage sludge incinerator stack, the information used to measure moisture content in the exit gas,

and the combustion temperatures for the sewage sludge incinerator shall be monitored continuously.

3. Air Pollution Control Device Operating Parameters. Unless specified otherwise in this Chapter, the frequency of monitoring for the appropriate air pollution control device operating parameters shall be daily.

4. The frequency of monitoring shall be as specified in this Section for any performance testing or other sampling requirements not covered above. If the frequency of monitoring is not specified, then the frequency of monitoring shall be as specified by the administrative authority.

#### H. Recordkeeping

1. If the owner/operator of a sewage sludge incinerator is the person who prepares sewage sludge, the owner/operator of the sewage sludge incinerator shall keep a record of the annual production of sewage sludge (i.e., dry ton or dry metric tons) and of the sewage sludge management practice used and retain such record for a period of five years.

2. The owner/operator of a sewage sludge incinerator shall develop the following information and shall retain this information for five years:

a. the concentration of lead, arsenic, cadmium, chromium, and nickel in the sewage sludge fed to the sewage sludge incinerator;

b. the total hydrocarbons concentrations in the exit gas from the sewage sludge incinerator stack;

c. information that indicates the requirements in the national emission standard for beryllium in Subpart C of 40 CFR Part 61 (as incorporated by reference at LAC 33:III.5116) are met;

d. information that indicates the requirements in the national emission standard for mercury in Subpart E of 40 CFR Part 61 (as incorporated by reference at LAC 33:III.5116) are met;

e. the operating combustion temperatures for the sewage sludge incinerator;

f. values for the air pollution control device operating parameters;

g. the oxygen concentration and information used to measure moisture content in the exit gas from the sewage sludge incinerator stack;

h. the sewage sludge feed rate;

i. the stack height for the sewage sludge incinerator;

j. the dispersion factor for the site where the sewage sludge incinerator is located;

k. the control efficiency for lead, arsenic, cadmium, chromium, and nickel for each sewage sludge incinerator;

l. the risk-specific concentration for chromium calculated using Equation (6), if applicable;

m. a calibration and maintenance log for the instruments used to measure the total hydrocarbons concentration and oxygen concentration in the exit gas from the sewage sludge incinerator stack, the information needed to determine moisture content in the exit gas, and the combustion temperatures;

n. results of the particulate matter testing required in Subparagraph D.6.b of this Section;

o. for incinerators equipped with a wet scrubbing device, a record of the measured pressure drop of the gas

flow through the wet scrubbing device, as required by Paragraph F.4 of this Section;

p. a record of the rate of sewage sludge fed to the incinerator, the fuel flow to the incinerator, and the total solids and volatile solids content of the sewage sludge charged to the incinerator; and

q. results of all applicable performance tests required in this Section.

#### I. Reporting

1. If the owner/operator of a sewage sludge incinerator is the person who prepares the sewage sludge, the owner/operator shall submit the information in Paragraph H.1 of this Section to the administrative authority on February 19 of each year.

2. The owner/operator of a sewage sludge incinerator shall submit the information in Subparagraphs H.2.a-q of this Section to the administrative authority on February 19 of each year.

3. In addition to the reporting requirements in Paragraphs I.1 and 2 of this Section, the owner/operator of any multiple hearth, fluidized bed, or electric sewage sludge incinerator subject to the provisions of this Chapter shall submit to the administrative authority on February 19 and August 19 of each year (semiannually) a report in writing that contains the following:

a. a record of average scrubber pressure drop measurements for each period of 15 minutes duration or more during which the pressure drop of the scrubber was less than, by a percentage specified below, the average scrubber pressure drop measured during the most recent performance test. The percent reduction in scrubber pressure drop for which a report is required shall be determined as follows:

i. for incinerators that achieved an average particulate matter emission rate of 0.38 kg/mg (0.75 lb/ton) dry sewage sludge input or less during the most recent performance test, a scrubber pressure drop reduction of more than 30 percent from the average scrubber pressure drop recorded during the most recent performance test shall be reported; and

ii. for incinerators that achieved an average particulate matter emission rate of greater than 0.38 kg/mg (0.75 lb/ton) dry sewage sludge input during the most recent performance test, a percent reduction in pressure drop greater than that calculated according to the following equation shall be reported:

$$P = -111E + 72.15$$

where:

$P$  = percent reduction in pressure drop

$E$  = average particulate matter emissions (kg/megagram)

b. a record of average oxygen content in the incinerator exhaust gas for each period of 1-hour duration or more that the oxygen content of the incinerator exhaust gas exceeds the average oxygen content measured during the most recent performance test by more than 3 percent.

4. The owner or operator of any multiple hearth, fluidized bed, or electric sewage sludge incinerator from which the average particulate matter emission rate measured during the performance test required at Paragraph C.4 of this Section exceeds 0.38 g/kg of dry sewage sludge input (0.75

lb/ton of dry sewage sludge input) shall include in the report for each calendar day that a decrease in scrubber pressure drop or increase in oxygen content of exhaust gas is reported, a record of the following:

- a. scrubber pressure drop averaged over each 1-hour incinerator operating period;
- b. oxygen content in the incinerator exhaust averaged over each 1-hour incinerator operating period;
- c. temperatures of every hearth in multiple hearth incinerators, the bed and outlet of fluidized bed incinerators, and the drying, combustion, and cooling zones of electric incinerators averaged over each 1-hour incinerator operating period;
- d. rate of sewage sludge charged to the incinerator averaged over each 1-hour incinerator operating period;
- e. incinerator fuel use averaged over each 8-hour incinerator operating period; and
- f. moisture and volatile solids content of the daily grab sample of sewage sludge charged to the incinerator.

5. The owner or operator of any sewage sludge incinerator other than a multiple hearth, fluidized bed, or electric incinerator or any sewage sludge incinerator equipped with a control device other than a wet scrubber shall include in the semiannual report a record of control device operation measurements, as specified in the plan approved under Paragraph C.5 of this Section.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2074(B)(1)(c) and (B)(3)(e).

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:809 (April 2002), repromulgated LR 30:233 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2399 (November 2007).

### **§7313. Standard Conditions Applicable to All Sewage Sludge and Biosolids Use or Disposal Permits**

#### **A. General Conditions**

1. Incorporation of Provisions. In accordance with the provisions of this Chapter all Sewage Sludge and Biosolids Use or Disposal Permits shall incorporate either expressly or by reference all conditions and requirements applicable to the preparation and use or disposal of sewage sludge set forth in the Louisiana Environmental Quality Act, as amended, as well as all applicable regulations.

2. Duty to Comply. The permittee must comply with all conditions of an issued final permit. Any permit noncompliance constitutes a violation of the Louisiana Environmental Quality Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

#### **3. Enforcement Actions**

a. The department may take enforcement action as prescribed by state law or regulation against any person who:

- i. fails to submit a permit application as required by law;
- ii. knowingly makes any false statement, representation, or certification in any application, record, report, or other document filed with the department pursuant to the Act or these regulations. Violations of this provision may subject the violator to the penalties provided for in the Act for perjury or false statements;

iii. fails to correct deficiencies in the permit application, or upon becoming aware that any relevant facts or information were omitted in a permit application or in any report to the department, fails to promptly submit such facts or information;

iv. fails to take any necessary action to complete the permit issuance, such as payment of fees or publication of required notices; or

v. fails to comply with any condition of the permit.

b. In cases where an application for a Sewage Sludge and Biosolids Use or Disposal Permit is withdrawn by the applicant, a written notification shall be provided to the Office of Environmental Services stating that no sewage sludge use or disposal practice or other activity that would require a permit from the Office of Environmental Services is currently taking place. Provided that the application was not made in response to previous enforcement action, the applicant is then exempt from enforcement action for causes listed under this Paragraph.

#### **4. Toxic Pollutants**

a. If any sewage sludge use or disposal standard or prohibition is promulgated under this Chapter or Section 405 of the Clean Water Act for a pathogen or pollutant, or concerning vector attraction reduction, management practices, etc., and that standard or prohibition is more stringent than any applicable requirement in an existing permit, the administrative authority shall institute proceedings under these regulations to modify or revoke and reissue the permit to conform to the sewage sludge use or disposal standard or prohibition.

b. The permittee shall comply with sewage sludge use or disposal standards or prohibitions established under this Chapter within the time frame provided in the regulations that establish these standards or prohibitions, even if the permit has not been modified to incorporate the requirement.

5. Duty to Reapply for an Individual Permit. If the permittee wishes to continue an activity regulated by an existing permit after the expiration date of that permit, the permittee must apply for and obtain a new permit. The new application shall be submitted at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the administrative authority. (The administrative authority shall not grant permission for applications to be submitted later than the expiration date of the existing permit.) A permit that was issued in accordance with these regulations and that has expired shall be administratively continued until such time as a decision on an application to continue an activity under the permit has been issued by the administrative authority, if the application was received by the department at least 180 days prior to the permit expiration.

6. Permit Action. The conditions set forth in LAC 33:IX.2903, 2905, 2907, 3105, and 6509 as causes for modification, revocation and reissuance, and termination of a permit shall apply to permits issued in accordance with these regulations.

7. Property Rights. The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.

8. Duty to Provide Information. The permittee shall furnish to the administrative authority, within a reasonable time, any information that the administrative authority requests to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit, or to determine compliance with the permit. The permittee shall also furnish to the administrative authority, upon request, copies of records required to be kept by the permit.

9. State Laws. Nothing in the permit shall be construed to preclude the institution of any legal action, or to relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable state law or regulation.

10. Severability. If any provision of these regulations, or the application thereof, is held to be invalid, the remaining provisions of these regulations shall not be affected, so long as they can be given effect without the invalid provision. To this end, the provisions of these regulations are declared to be severable.

11. Draft Permits. The conditions set forth in LAC 33:IX.3107 for draft permits shall also pertain to permits issued in accordance with these regulations.

12. Fact Sheet. A fact sheet shall be prepared for each draft permit issued in accordance with these regulations. The contents of the fact sheet shall include, but not be limited to, the following:

- a. the name of the applicant;
- b. the name of the facility;
- c. the address of the facility;
- d. the physical location of all facilities that are utilized to prepare sewage sludge or biosolids;
- e. the physical location of all land application sites;
- f. general and management practices;
- g. soil and site restrictions;
- h. monitoring, sampling and analysis, and reporting requirements; and
- i. all other information that is pertinent to the facility and to the permitting process.

13. Public Notice of Permit Actions and Public Comment Period. The conditions set forth in LAC 33:IX.3113 and 6521 for public notices and the public comment period shall apply to all permits issued in accordance with these regulations.

14. Public Comments and Requests for Public Hearings. The conditions set forth in LAC 33:I.1505 and IX.3115 for public comments and requests for public hearings shall apply to all permits issued in accordance with these regulations.

15. Public Hearings. The conditions set forth in LAC 33:IX.3117 for public hearings shall apply to all permits issued in accordance with these regulations.

16. Obligations to Raise Issues and Provide Information during the Public Comment Period. The conditions set forth in LAC 33:IX.3119 for the obligations to raise issues and provide information during the public comment period shall apply to all permits issued in accordance with these regulations.

17. Reopening of the Public Comment Period. The conditions set forth in LAC 33:IX.3121 for reopening of the public comment period shall apply to all permits issued in accordance with these regulations.

18. Issuance of a Final Permit Decision. After the close of the public comment period under Paragraph A.13 of this Section for a draft permit, the administrative authority shall issue a final permit decision. The administrative authority shall notify the applicant and each person who has submitted written comments or requested notice of the final permit decision. This notice shall include reference to the procedures for appealing a decision on a Sewage Sludge and Biosolids Use or Disposal Permit. For the purposes of this Section a *final permit decision* means a final decision to issue, deny, modify, revoke and reissue, or terminate a permit.

19. Response to Comments. The conditions set forth in LAC 33:IX.3125 for responding to comments shall apply to all permits issued in accordance with these regulations.

#### B. Proper Operation and Maintenance

1. Need to Halt or Reduce Not a Defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.

2. Duty to Mitigate. The permittee shall take all reasonable steps to minimize or prevent any sewage sludge use or disposal practice in violation of the permit that has a reasonable likelihood of adversely affecting human health or the environment. The permittee shall also take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with the permit, including putting into effect such accelerated or additional monitoring as is necessary to determine the nature and impact of the noncomplying practice.

#### 3. Proper Operation and Maintenance

a. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) that are installed or used by the permittee to achieve compliance with the conditions of the permit. Proper operation and maintenance also includes employing adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems that are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

b. The permittee shall provide an adequate operating staff that is duly qualified to carry out operation and maintenance and other functions necessary to ensure compliance with the conditions of the permit.

#### C. Monitoring and Records

1. Inspection and Entry. The conditions set forth in LAC 33:IX.6513 for inspection and entry shall apply to all permits issued in accordance with these regulations.

2. Additional Monitoring by the Permittee. If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under LAC 33:IX.7301.I or, unless otherwise specified in 40 CFR Part 503, as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted on the sludge reporting form specified by the administrative authority.

### 3. Laboratory Accreditation

a. LAC 33:I.Chapters 45-59 provide requirements for an accreditation program specifically applicable to commercial laboratories, wherever located, that provide chemical analyses, analytical results, or other test data to the department, by contract or by agreement, and the data is:

- i. submitted on behalf of any facility, as defined in R.S. 30:2004;
- ii. required as part of any permit application;
- iii. required by order of the department;
- iv. required to be included on any monitoring report submitted to the department;
- v. required to be submitted by a contractor; or
- vi. otherwise required by department regulations.

b. The department laboratory accreditation program is designed to ensure the accuracy, precision, and reliability of the data generated, as well as the use of department-approved methodologies in generation of that data. Laboratory data generated by commercial environmental laboratories that are not accredited under these regulations will not be accepted by the department. Retesting and re-analyses by an accredited commercial laboratory will be required. Where retesting is not possible, the data generated will be considered invalid and in violation of the Sewage Sludge and Biosolids Use or Disposal Permit.

c. The regulations and guidelines on the environmental laboratory accreditation program and a list of laboratories that have applied for accreditation are available on the department's website. Questions concerning the program may be directed to the Office of Environmental Assessment.

#### D. Reporting Requirements

1. Facility Changes. The permittee shall give notice to the Office of Environmental Services as soon as possible of any planned physical alterations or additions to the permitted facility.

2. Anticipated Noncompliance. The permittee shall give advance notice to the Office of Environmental Services of any planned changes in the permitted facility or activity that may result in noncompliance with permit requirements.

3. Transfers. A permit is not transferable to any person except after notice to the Office of Environmental Services. The administrative authority may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the Louisiana Environmental Quality Act. Except as provided in LAC 33:IX.2901.A, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued, or a minor modification made to identify the new permittee and incorporate such other requirements as may be necessary under the Louisiana Environmental Quality Act.

4. Compliance Schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of a permit shall be submitted no later than 14 days following each schedule date.

5. Other Noncompliance. The permittee shall report all instances of noncompliance not reported under Paragraph D.4 of this Section at the time monitoring reports are submitted.

6. Other Information. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the administrative authority, it shall promptly submit the omitted facts or correct information.

7. Signatory Requirements. All applications, reports, or information submitted to the administrative authority shall be signed and certified.

a. All permit applications shall be signed as follows:

i. for a corporation—by a responsible corporate officer. For the purposes of this Section, a *responsible corporate officer* means:

(a) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation. These responsible corporate officers are presumed to have the authority to sign permit applications unless the corporation has notified the administrative authority to the contrary; or

(b) the manager of one or more manufacturing, production, or operating facilities, provided that the manager is authorized to make management decisions that govern the operation of the regulated facility, including having the explicit or implicit duty of making major capital investment recommendations and initiating and directing other comprehensive measures to ensure long term compliance with environmental laws and regulations; the manager has the authority to ensure that the necessary systems are established or actions are taken to gather complete and accurate information for permit application requirements; and the authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures. Corporate procedures governing authority to sign permit applications may provide for assignment or delegation to applicable corporate positions rather than to specific individuals;

ii. for a partnership or sole proprietorship—by a general partner or the proprietor, respectively; or

iii. for a municipality or a state, federal, or other public agency—by either a principal executive officer or ranking elected official. For purposes of this Paragraph, a principal executive officer of a federal agency includes:

(a) the chief executive officer of the agency; or

(b) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a regional administrator of EPA).

b. All reports required by permits, and submission of other information requested by the administrative authority, shall be signed by a person described in Subparagraph D.7.a of this Section, or by a duly authorized

representative of that person. For the purposes of this Subparagraph, a person is a *duly authorized representative* only if:

i. his or her authorization has been made in writing by a person described in Subparagraph D.7.a of this Section;

ii. the authorization specifies either an individual or a position now having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or a position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or an individual occupying a named position; and

iii. the written authorization is submitted to the administrative authority.

c. Changes to Authorization. If an authorization under Subparagraph D.7.b of this Section is no longer accurate because a different individual or position now has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Subparagraph D.7.b of this Section must be submitted to the administrative authority prior to, or together with, any reports, information, or applications to be signed by an authorized representative.

d. Certification. Any person signing a document under the provisions of Subparagraph D.7.a or b of this Section shall make the following certification.

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

8. Availability of Reports. All recorded information concerning permits and permit applications under this Chapter (completed permit application forms, fact sheets, draft permits, or any public document) not classified as confidential information under R.S. 30:2030(A) and 2074(D) and designated as such in accordance with LAC 33:IX.2323.A and C and LAC 33:IX.6503 shall be made available to the public for inspection and copying during normal working hours in accordance with the Public Records Act, R.S. 44:1 et seq. Claims of confidentiality for the following will be denied:

a. the name and address of any permit applicant or permittee;

b. permit applications, permits, and effluent data; and

c. information required by the Sewage Sludge and Biosolids Use or Disposal Permit application forms provided by the administrative authority. This includes information submitted on the forms themselves and any attachments used to supply information required by the forms.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(1)(c) and (B)(3)(e).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:2406 (November 2007).

## Subchapter B. Appendices

### §7395. Financial Assurances Documents—Appendices

#### A, B, C, D, E, F, G, H, I, and J [Formerly §7135]

##### A. Appendix A—Liability Endorsement

COMMERCIAL PREPARER OF SEWAGE SLUDGE FACILITY OR  
COMMERCIAL LAND APPLIER OF BIOSOLIDS LAND  
APPLICATION SITE

##### LIABILITY ENDORSEMENT

Secretary  
Louisiana Department of Environmental Quality  
Post Office Box 4313  
Baton Rouge, Louisiana 70821-4313  
Attention: Office of Environmental Services,  
Water Permits Division

Dear Sir:

(A). This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering bodily injury and property damage in connection with [name of the insured, which must be either the permit holder, the applicant, or the operator. (Note: The operator will provide the liability-insurance documentation only when the permit holder/applicant is a public governing body and the public governing body is not the operator.)] The insured's obligation to demonstrate financial responsibility is required in accordance with *Louisiana Administrative Code* (LAC), Title 33, Part IX.7307.A.2. The coverage applies at [list the site identification number, site name, facility name, facility permit number, and facility address] for sudden and accidental occurrences. The limits of liability are per occurrence, and annual aggregate, per site, exclusive of legal-defense costs.

(B). The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions of the policy inconsistent with Subclauses (1)-(5), below, are hereby amended to conform with Subclauses (1)-(5), below:

(1). Bankruptcy or insolvency of the insured shall not relieve the insurer of its obligations under the policy to which this endorsement is attached.

(2). The insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated, as specified in LAC 33:IX.7307.A.2.d, e, or f.

(3). Whenever requested by the administrative authority, the insurer agrees to furnish to the administrative authority a signed duplicate original of the policy and all endorsements.

(4). Cancellation of this endorsement, whether by the insurer or the insured, will be effective only upon written notice and upon lapse of 60 days after a copy of such written notice is received by the administrative authority.

(5). Any other termination of this endorsement will be effective only upon written notice and upon lapse of 30 days after a copy of such written notice is received by the administrative authority.

(C). Attached is the endorsement which forms part of the policy [policy number] issued by [name of insurer], herein called the insurer, of [address of the insurer] to [name of the insured] of [address of the insured], this [date]. The effective date of said policy is [date].

(D). I hereby certify that the wording of this endorsement is identical to the wording specified in LAC 33:IX.7307.A.2.b, effective on the date first written above and that insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states, and is admitted, authorized, or eligible to conduct insurance business in the state of Louisiana.

[Signature of authorized representative of insurer]  
[Typed name of authorized representative of insurer]  
[Title of authorized representative of insurer]  
[Address of authorized representative of insurer]

## B. Appendix B—Certificate of Insurance

### COMMERCIAL PREPARER OF SEWAGE SLUDGE FACILITY OR COMMERCIAL LAND APPLIER OF BIOSOLIDS LAND APPLICATION SITE

#### CERTIFICATE OF LIABILITY INSURANCE

Secretary  
Louisiana Department of Environmental Quality  
Post Office Box 4313  
Baton Rouge, Louisiana 70821-4313  
Attention: Office of Environmental Services,  
Water Permits Division

Dear Sir:

(A). [Name of insurer], the "insurer," of [address of insurer] hereby certifies that it has issued liability insurance covering bodily injury and property damage to [name of insured, which must be either the permit holder or applicant of the facility], the "insured," of [address of insured] in connection with the insured's obligation to demonstrate financial responsibility under *Louisiana Administrative Code* (LAC), Title 33, Part IX.7307.A.2. The coverage applies at [list agency interest number(s), site name(s), facility name(s), facility permit number(s), and site address(es)] for sudden and accidental occurrences. The limits of liability are each occurrence and annual aggregate, per site, exclusive of legal-defense costs. The coverage is provided under policy number [policy number], issued on [date]. The effective date of said policy is [date].

(B). The insurer further certifies the following with respect to the insurance described in Paragraph (A):

(1). Bankruptcy or insolvency of the insured shall not relieve the insurer of its obligations under the policy.

(2). The insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated, as specified in LAC 33:IX.7307.A.2.d, e, or f.

(3). Whenever requested by the administrative authority, the insurer agrees to furnish to him a signed duplicate original of the policy and all endorsements.

(4). Cancellation of the insurance, whether by the insurer or the insured, will be effective only upon written notice and upon lapse of 60 days after a copy of such written notice is received by the administrative authority.

(5). Any other termination of the insurance will be effective only upon written notice and upon lapse of 30 days after a copy of such written notice is received by the administrative authority.

(C). I hereby certify that the wording of this certificate is identical to the wording specified in LAC 33:IX.7307.A.2.c, as such regulations were constituted on the date first written above, and that the insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states, and is admitted, authorized, or eligible to conduct insurance business in the state of Louisiana.

[Signature of authorized representative of insurer]  
[Typed name of authorized representative of insurer]  
[Title of authorized representative of insurer]  
[Address of authorized representative of insurer]

## C. Appendix C—Letter of Credit

### COMMERCIAL PREPARER OF SEWAGE SLUDGE FACILITY OR COMMERCIAL LAND APPLIER OF BIOSOLIDS LAND APPLICATION SITE

#### IRREVOCABLE LETTER OF CREDIT

Secretary  
Louisiana Department of Environmental Quality  
Post Office Box 4313  
Baton Rouge, Louisiana 70821-4313  
Attention: Office of Environmental Services,  
Water Permits Division

Dear Sir:

We hereby establish our Irrevocable Standby Letter of Credit No.[number] at the request and for the account of [permit holder's or applicant's name and address] for its [list site identification number(s), site

name(s), facility name(s), and facility permit number(s)] at [location(s)], Louisiana, in favor of any governmental body, person, or other entity for any sum or sums up to the aggregate amount of U.S. dollars [amount] upon presentation of:

(A). A final judgment issued by a competent court of law in favor of a governmental body, person, or other entity and against [permit holder's or applicant's name] for sudden and accidental occurrences for claims arising out of injury to persons or property due to the operation of the commercial preparer of sewage sludge facility or commercial land applier of biosolids land application site at the [name of permit holder or applicant] at [site location(s)] as set forth in the *Louisiana Administrative Code* (LAC), Title 33, Part IX.7307.A.

(B). A sight draft bearing reference to the Letter of Credit No. [number] drawn by the governmental body, person, or other entity, in whose favor the judgment has been rendered as evidenced by documentary requirement in Paragraph (A).

The Letter of Credit is effective as of [date] and will expire on [date], but such expiration date will be automatically extended for a period of at least one year on the above expiration date [date] and on each successive expiration date thereafter, unless, at least 120 days before the then-current expiration date, we notify both the administrative authority and [name of permit holder or applicant] by certified mail that we have decided not to extend this Letter of Credit beyond the then-current expiration date. In the event we give such notification, any unused portion of this Letter of Credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by both the Department of Environmental Quality and [name of permit holder/applicant] as shown on the signed return receipts.

Whenever this Letter of Credit is drawn under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [name of permit holder or applicant] in accordance with the administrative authority's instructions.

Except to the extent otherwise expressly agreed to, the Uniform Customs and Practice for Documentary Letters of Credit (1983), International Chamber of Commerce Publication No. 400, shall apply to this Letter of Credit.

We certify that the wording of this Letter of Credit is identical to the wording specified in LAC 33:IX.7307.A.2.d.v, effective on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution(s)]  
[date]

## D. Appendix D—Trust Agreement

### COMMERCIAL PREPARER OF SEWAGE SLUDGE FACILITY OR COMMERCIAL LAND APPLIER OF BIOSOLIDS LAND APPLICATION SITE

#### TRUST AGREEMENT/STANDBY TRUST AGREEMENT

This Trust Agreement (the "Agreement") is entered into as of [date] by and between [name of permit holder or applicant], a [name of state] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert "incorporated in the state of" or "a national bank" or "a state bank"], the "Trustee."

WHEREAS, the Department of Environmental Quality of the State of Louisiana, an agency of the state of Louisiana, has established certain regulations applicable to the Grantor, requiring that a permit holder or applicant for a permit for a commercial preparer of sewage sludge facility shall provide assurance that funds will be available when needed for [closure and/or post-closure] care of the facility;

WHEREAS, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the facility identified herein;

WHEREAS, the Grantor, acting through its duly authorized officers, has selected [the Trustee] to be the trustee under this Agreement, and [the Trustee] is willing to act as trustee.

NOW, THEREFORE, the Grantor and the Trustee agree as follows:

#### SECTION 1. DEFINITIONS

As used in this Agreement:

(a). The term "Grantor" means the permit holder or applicant who enters into this Agreement and any successors or assigns of the Grantor.

(b). The term "Trustee" means the Trustee who enters into this Agreement and any successor trustee.

(c). The term "Secretary" means the Secretary of the Louisiana Department of Environmental Quality.

(d). The term "Administrative Authority" means the Secretary or a person designated by him to act therefor.

## SECTION 2. IDENTIFICATION OF FACILITIES AND COST ESTIMATES

This Agreement pertains to the facilities and cost estimates identified on attached Schedule A. [On Schedule A, list the agency interest number, site name, facility name, facility permit number, and the annual aggregate amount of liability coverage or current closure and/or post-closure cost estimates, or portions thereof, for which financial assurance is demonstrated by this Agreement.]

## SECTION 3. ESTABLISHMENT OF FUND

The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the Louisiana Department of Environmental Quality. The Grantor and the Trustee intend that no third party shall have access to the Fund, except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. [Note: Standby Trust Agreements need not be funded at the time of execution. In the case of Standby Trust Agreements, Schedule B should be blank except for a statement that the Agreement is not presently funded, but shall be funded by the financial assurance document used by the Grantor in accordance with the terms of that document.] Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, in trust, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the administrative authority.

## SECTION 4. PAYMENT FOR CLOSURE AND/OR POST-CLOSURE CARE OR LIABILITY COVERAGE

The Trustee shall make payments from the Fund as the administrative authority shall direct, in writing, to provide for the payment of the costs of [liability claims, closure and/or post-closure] care of the facility covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the administrative authority from the Fund for [liability claims, closure and/or post-closure] expenditures in such amounts as the administrative authority shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the administrative authority specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

## SECTION 5. PAYMENTS COMPRISED BY THE FUND

Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

## SECTION 6. TRUSTEE MANAGEMENT

The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of like character and with like aims, except that:

(a). Securities or other obligations of the Grantor, or any owner of the [facility or facilities] or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2.(a), shall not be acquired or held, unless they are securities or other obligations of the federal or a state government.

(b). The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and

(c). The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

## SECTION 7. COMMINGLING AND INVESTMENT

The Trustee is expressly authorized, at its discretion:

(a). To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b). To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1, et seq., including one which may be created, managed, or underwritten, or one to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares at its discretion.

## SECTION 8. EXPRESS POWERS OF TRUSTEE

Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a). To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b). To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c). To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve Bank, but the books and records of the Trustee shall at all times show that all securities are part of the Fund;

(d). To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and

(e). To compromise or otherwise adjust all claims in favor of, or against, the Fund.

## SECTION 9. TAXES AND EXPENSES

All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and other proper charges and disbursements of the Trustee, shall be paid from the Fund.

## SECTION 10. ANNUAL VALUATION

The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the administrative authority a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee, within 90 days after the statement has been furnished to the Grantor and the administrative authority, shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

## SECTION 11. ADVICE OF COUNSEL

The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any questions arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

## SECTION 12. TRUSTEE COMPENSATION

The Trustee shall be entitled to reasonable compensation for its services, as agreed upon in writing from time to time with the Grantor.

## SECTION 13. SUCCESSOR TRUSTEE

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall, in writing, specify to the Grantor, the administrative authority, and the present Trustee by certified mail, 10 days before such change becomes effective, the date on which it assumes administration of the trust. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

## SECTION 14. INSTRUCTIONS TO THE TRUSTEE

All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by the persons designated in the attached Exhibit A or such other persons as the Grantor may designate by amendment to Exhibit

A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the administrative authority to the Trustee shall be in writing and signed by the administrative authority. The Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or termination of the authority of any person to act on behalf of the Grantor or administrative authority hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or administrative authority, except as provided for herein.

**SECTION 15. NOTICE OF NONPAYMENT**

The Trustee shall notify the Grantor and the administrative authority, by certified mail, within 10 days following the expiration of the 30-day period after the anniversary of the establishment of the Trust, if no payment is received from the Grantor during that period. After the pay-in period is completed, the Trustee shall not be required to send a notice of nonpayment.

**SECTION 16. AMENDMENT OF AGREEMENT**

This Agreement may be amended by an instrument, in writing, executed by the Grantor, the Trustee, and the administrative authority, or by the Trustee and the administrative authority, if the Grantor ceases to exist.

**SECTION 17. IRREVOCABILITY AND TERMINATION**

Subject to the right of the parties to amend this Agreement, as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the administrative authority, or by the Trustee and the administrative authority, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

**SECTION 18. IMMUNITY AND INDEMNIFICATION**

The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any direction by the Grantor or the administrative authority issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all reasonable expenses incurred in its defense in the event that the Grantor fails to provide such defense.

**SECTION 19. CHOICE OF LAW**

This Agreement shall be administered, construed, and enforced according to the laws of the state of Louisiana.

**SECTION 20. INTERPRETATION**

As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective officers duly authorized [and their corporate seals to be hereunto affixed] and attested to as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in *Louisiana Administrative Code* (LAC), Title 33, Part IX.7307.B.3.i, on the date first written above.

**WITNESSES:**

\_\_\_\_\_  
\_\_\_\_\_

**GRANTOR:**

\_\_\_\_\_  
**By:** \_\_\_\_\_  
**Its:** \_\_\_\_\_  
**[Seal]**

**TRUSTEE:**

\_\_\_\_\_  
**By:** \_\_\_\_\_  
**Its:** \_\_\_\_\_  
**[Seal]**

THUS DONE AND PASSED in my office in \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, in the presence of \_\_\_\_\_ and \_\_\_\_\_, competent witnesses, who hereunto sign their names with the said appearers and me, Notary, after reading the whole.

\_\_\_\_\_  
Notary Public

(The following is an example of the certification of acknowledgement that must accompany the trust agreement.)

STATE OF LOUISIANA

PARISH OF \_\_\_\_\_

BE IT KNOWN, that on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, before me, the undersigned Notary Public, duly commissioned and qualified within the State and Parish aforesaid, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared \_\_\_\_\_, to me well known, who declared and acknowledged that he had signed and executed the foregoing instrument as his act and deed, and as the act and deed of the \_\_\_\_\_, a corporation, for the consideration, uses, and purposes and on terms and conditions therein set forth.

And the said appearer, being by me first duly sworn, did depose and say that he is the \_\_\_\_\_ of said corporation and that he signed and executed said instrument in his said capacity, and under authority of the Board of Directors of said corporation.

Thus done and passed in the State and Parish aforesaid, on the day and date first hereinabove written, and in the presence of \_\_\_\_\_ and \_\_\_\_\_, competent witnesses, who have hereunto subscribed their name as such, together with said appearer and me, said authority, after due reading of the whole.

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NOTARY PUBLIC

**E. Appendix E—Surety Bond**

COMMERCIAL PREPARER OF SEWAGE SLUDGE FACILITY OR  
COMMERCIAL LAND APPLIER OF BIOSOLIDS LAND  
APPLICATION SITE

**FINANCIAL GUARANTEE BOND**

Date bond was executed: \_\_\_\_\_

Effective date: \_\_\_\_\_

Principal: [legal name and business address of permit holder or applicant]

Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"]

State of incorporation: \_\_\_\_\_

Surety: [name and business address]

[agency interest number, site name, facility name, facility permit number, and current closure and/or post-closure amount(s) for each facility guaranteed by this bond]

Total penal sum of bond: \$ \_\_\_\_\_

Surety's bond number: \_\_\_\_\_

Know All Persons By These Presents, That we, the Principal and Surety hereto, are firmly bound to the Louisiana Department of Environmental Quality in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where Sureties are corporations acting as cosureties, we the sureties bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit or liability is indicated, the limit of liability shall be the full amount of the penal sum.

WHEREAS, said Principal is required, under the Louisiana Environmental Quality Act, R.S. 30:2001 et seq., and specifically 2074(B)(4), to have a permit in order to own or operate the commercial preparer of sewage sludge facility identified above; and

WHEREAS, the Principal is required by law to provide financial assurance for closure and/or post-closure care, as a condition of the permit; and

WHEREAS, said Principal shall establish a standby trust fund as is required by the *Louisiana Administrative Code* (LAC), Title 33, Part IX.7307, when a surety bond is used to provide such financial assurance;

NOW THEREFORE, the conditions of the obligation are such that if the Principal shall faithfully, before the beginning of final closure of the facility identified above, fund the standby trust fund in the amount(s) identified above for the facility,

OR, if the Principal shall fund the standby trust fund in such amount(s) within 15 days after an order to close is issued by the administrative authority or a court of competent jurisdiction,

OR, if the Principal shall provide alternate financial assurance as specified in LAC 33:IX.7307.B and obtain written approval from the administrative authority of such assurance, within 90 days after the date of

notice of cancellation is received by both the Principal and the administrative authority from the Surety,

THEN, this obligation shall be null and void; otherwise it is to remain in full force and effect.

The Surety shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the administrative authority that the Principal has failed to perform as guaranteed by this bond, the Surety shall place funds in the amount guaranteed for the facility into the standby trust fund as directed by the administrative authority.

The Surety hereby waives notification or amendments to closure plans, permits, applicable laws, statutes, rules, and regulations, and agrees that no such amendment shall in any way alleviate its obligation on this bond.

The liability of the Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety hereunder exceed the amount of the penal sum.

The Surety may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the administrative authority. Cancellation shall not occur before 120 days have elapsed beginning on the date that both the Principal and the administrative authority received the notice of cancellation, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety and to the administrative authority, provided, however, that no such notice shall become effective until the Surety has received written authorization for termination of the bond by the administrative authority.

The Principal and Surety hereby agree to adjust the penal sum of the bond yearly in accordance with LAC 33:IX.7307.B and the conditions of the commercial preparer of sewage sludge facility permit so that it guarantees a new closure and/or post-closure amount, provided that the penal sum does not increase or decrease without the written permission of the administrative authority.

The Principal and Surety hereby agree that no portion of the penal sum may be expended without prior written approval of the administrative authority.

IN WITNESS WHEREOF, the Principal and the Surety have executed this FINANCIAL GUARANTEE BOND and have affixed their seals on the date set forth above.

Those persons whose signatures appear below hereby certify that they are authorized to execute this FINANCIAL GUARANTEE BOND on behalf of the Principal and Surety, that each Surety hereto is authorized to do business in the state of Louisiana, and that the wording of this surety bond is identical to the wording specified in LAC 33:IX.7307.B.4.h, effective on the date this bond was executed.

**PRINCIPAL**  
[Signature(s)]  
[Name(s)]  
[Title(s)]  
[Corporate Seal]

**CORPORATE SURETIES**  
[Name and Address]  
State of incorporation: \_\_\_\_\_  
Liability limit: \$ \_\_\_\_\_  
[Signature(s)]  
[Name(s) and title(s)]  
[Corporate seal]  
[This information must be provided for each cosurety]  
Bond Premium: \$ \_\_\_\_\_

**F. Appendix F—Performance Bond**

COMMERCIAL PREPARER OF SEWAGE SLUDGE FACILITY OR  
COMMERCIAL LAND APPLIER OF BIOSOLIDS LAND  
APPLICATION SITE

**PERFORMANCE BOND**

Date bond was executed: \_\_\_\_\_

Effective date: \_\_\_\_\_

Principal: [legal name and business address of permit holder or applicant]

Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"]

State of incorporation: \_\_\_\_\_

Surety: [name(s) and business address(es)]

[agency interest number, site name, facility name, facility permit number, facility address, and closure and/or post-closure amount(s) for each facility guaranteed by this bond (indicate closure and/or post-closure costs separately)]

Total penal sum of bond: \$ \_\_\_\_\_

Surety's bond number: \_\_\_\_\_

Know All Persons by These Presents, That we, the Principal and Surety hereto, are firmly bound to the Louisiana Department of Environmental Quality in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally; provided that, where Sureties are corporations acting as cosureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

WHEREAS, said Principal is required, under the Louisiana Environmental Quality Act, R.S. 30:2001 et seq., and specifically 2074(B)(4), to have a permit in order to own or operate the commercial preparer of sewage sludge facility identified above; and

WHEREAS, the Principal is required by law to provide financial assurance for closure and/or post-closure care, as a condition of the permit; and

WHEREAS, said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

THEREFORE, the conditions of this obligation are such that if the Principal shall faithfully perform closure, whenever required to do so, of the facility for which this bond guarantees closure, in accordance with the closure plan and other requirements of the permit as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended;

AND, if the Principal shall faithfully perform post-closure care of each facility for which this bond guarantees post-closure care, in accordance with the closure plan and other requirements of the permit, as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended;

OR, if the Principal shall provide financial assurance as specified in Louisiana Administrative Code (LAC), Title 33, Part IX.7307.B and obtain written approval of the administrative authority of such assurance, within 90 days after the date of notice of cancellation is received by both the Principal and the administrative authority, then this obligation shall be null and void; otherwise it is to remain in full force and effect.

The surety shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described hereinabove.

Upon notification by the administrative authority that the Principal has been found in violation of the closure requirements of LAC 33:IX.7305.C.3, or of its permit, for the facility for which this bond guarantees performances of closure, the Surety shall either perform closure, in accordance with the closure plan and other permit requirements, or place the closure amount guaranteed for the facility into the standby trust fund as directed by the administrative authority.

Upon notification by the administrative authority that the Principal has been found in violation of the post-closure requirements of the LAC 33:IX.7305.C.3, or of its permit for the facility for which this bond guarantees performance of post-closure, the Surety shall either perform post-closure in accordance with the closure plan and other permit requirements or place the post-closure amount guaranteed for the facility into the standby trust fund as directed by the administrative authority.

Upon notification by the administrative authority that the Principal has failed to provide alternate financial assurance, as specified in LAC 33:IX.7307.B, and obtain written approval of such assurance from the administrative authority during the 90 days following receipt by both the Principal and the administrative authority of a notice of cancellation of the bond, the Surety shall place funds in the amount guaranteed for the facility into the standby trust fund as directed by the administrative authority.

The Surety hereby waives notification of amendments to closure plans, permit, applicable laws, statutes, rules, and regulations, and agrees that no such amendment shall in any way alleviate its obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety hereunder exceed the amount of the penal sum.

The Surety may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the administrative authority.

Cancellation shall not occur before 120 days have lapsed beginning on the date that both the Principal and the administrative authority received the notice of cancellation, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety and to the administrative authority, provided, however, that no such notice shall become effective until the Surety receives written authorization for termination of the bond by the administrative authority.

The Principal and Surety hereby agree to adjust the penal sum of the bond yearly in accordance with LAC 33:IX.7307.B and the conditions of the commercial preparer of sewage sludge facility permit so that it guarantees a new closure and/or post-closure amount, provided that the penal sum does not increase or decrease without the written permission of the administrative authority.

The Principal and Surety hereby agree that no portion of the penal sum may be expended without prior written approval of the administrative authority.

IN WITNESS WHEREOF, the Principal and the Surety have executed this PERFORMANCE BOND and have affixed their seals on the date set forth above.

Those persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety, that each Surety hereto is authorized to do business in the state of Louisiana, and that the wording of this surety bond is identical to the wording specified in LAC 33:IX.7307.B.5.h, effective on the date this bond was executed.

**PRINCIPAL**  
[Signature(s)]  
[Name(s)]  
[Title(s)]  
[Corporate seal]

**CORPORATE SURETY**  
[Name and address]  
State of incorporation: \_\_\_\_\_  
Liability limit: \$ \_\_\_\_\_  
[Signature(s)]  
[Name(s) and title(s)]  
[Corporate seal]  
[For every cosurety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]  
Bond premium: \$ \_\_\_\_\_

**G. Appendix G—Letter of Credit**

COMMERCIAL PREPARER OF SEWAGE SLUDGE FACILITY OR  
COMMERCIAL LAND APPLIER OF BIOSOLIDS LAND  
APPLICATION SITE

**IRREVOCABLE LETTER OF CREDIT**

Secretary  
Louisiana Department of Environmental Quality  
Post Office Box 4313  
Baton Rouge, Louisiana 70821-4313  
Attention: Office of Environmental Services,  
Water Permits Division

Dear Sir:

We hereby establish our Irrevocable Standby Letter of Credit No. \_\_\_\_\_ in favor of the Department of Environmental Quality of the state of Louisiana at the request and for the account of [permit holder's or applicant's name and address] for the [closure and/or post-closure] fund for its [list agency interest number, site name, facility name, facility permit number] at [location], Louisiana, for any sum or sums up to the aggregate amount of U.S. dollars \$ \_\_\_\_\_ upon presentation of:

(i). A sight draft, bearing reference to the Letter of Credit No. \_\_\_\_\_ drawn by the administrative authority, together with;

(ii). A statement, signed by the administrative authority, declaring that the amount of the draft is payable into the standby trust fund pursuant to the Louisiana Environmental Quality Act, R.S. 30:2001, et seq.

The Letter of Credit is effective as of [date] and will expire on [date], but such expiration date will be automatically extended for a period of at least one year on the above expiration date [date] and on each successive expiration date thereafter, unless, at least 120 days before the then-current expiration date, we notify both the administrative authority and [name of permit holder or applicant] by certified mail that we have decided not to extend this Letter of Credit beyond the then-current expiration date. In the event that we give such notification, any unused portion of this Letter of Credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by both the Department of Environmental Quality and [name of permit holder or applicant], as shown on the signed return receipts.

Whenever this Letter of Credit is drawn under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [name of permit holder or applicant] in accordance with the administrative authority's instructions.

Except to the extent otherwise expressly agreed to, the [insert "the most recent addition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce," or "the Uniform Commercial Code"], shall apply to this Letter of Credit.

We certify that the wording of this Letter of Credit is identical to the wording specified in *Louisiana Administrative Code* (LAC), Title 33, Part IX.7307.B.6.h, effective on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution(s)]  
[date]

**H. Appendix H—Certificate of Insurance**

COMMERCIAL PREPARER OF SEWAGE SLUDGE FACILITY OR  
COMMERCIAL LAND APPLIER OF BIOSOLIDS LAND  
APPLICATION SITE

**CERTIFICATE OF INSURANCE FOR CLOSURE AND/OR POST-CLOSURE CARE**

Name and Address of Insurer: \_\_\_\_\_  
(hereinafter called the "Insurer")  
Name and Address of Insured: \_\_\_\_\_  
(hereinafter called the "Insured")  
(Note: Insured must be the permit holder or applicant.)

Facilities covered: [list the agency interest number, site name, facility name, facility permit number, address, and amount of insurance for closure and/or post-closure care] (These amounts for all facilities must total the face amount shown below.)

Face Amount: \_\_\_\_\_  
Policy Number: \_\_\_\_\_  
Effective Date: \_\_\_\_\_

The Insurer hereby certifies that it has issued to the Insured the policy of insurance identified above to provide financial assurance for [insert "closure and/or post-closure care"] for the facilities identified above. The Insurer further warrants that such policy conforms in all respects to the requirements of LAC 33:IX.7307.B, as applicable, and as such regulations were constituted on the date shown immediately below. It is agreed that any provision of the policy inconsistent with such regulations is hereby amended to eliminate such inconsistency.

Whenever requested by the administrative authority, the Insurer agrees to furnish to the administrative authority a duplicate original of the policy listed above, including all endorsements thereon.

I hereby certify that the Insurer is admitted, authorized, or eligible to conduct insurance business in the state of Louisiana and that the wording of this certificate is identical to the wording specified in LAC 33:IX.7307.B.7.j, effective on the date shown immediately below.

[Authorized signature of Insurer]  
[Name of person signing]  
[Title of person signing]  
Signature of witness or notary: \_\_\_\_\_  
[Date]

I. Appendix I—Letter from the Chief Financial Officer

COMMERCIAL PREPARER OF SEWAGE SLUDGE FACILITY OR  
COMMERCIAL LAND APPLIER OF BIOSOLIDS LAND  
APPLICATION SITE

LETTER FROM THE CHIEF FINANCIAL OFFICER  
(LIABILITY COVERAGE, CLOSURE, AND/OR POST-CLOSURE)

Secretary  
Louisiana Department of Environmental Quality  
Post Office Box 4313  
Baton Rouge, Louisiana 70821-4313  
Attention: Office of Environmental Services,  
Water Permits Division

Dear Sir:

I am the chief financial officer of [name and address of firm, which may be either the permit holder, applicant, or parent corporation of the permit holder or applicant]. This letter is in support of this firm's use of the financial test to demonstrate financial responsibility for [insert "liability coverage," "closure," and/or "post-closure," as applicable] as specified in [insert "Louisiana Administrative Code (LAC), Title 33, Part IX.7307.A," "LAC 33:IX.7307.B," or "LAC 33:IX.7307.A and B"].

[Fill out the following four paragraphs regarding facilities and associated liability coverage, and closure and post-closure cost estimates. If your firm does not have facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, list the agency interest number, site name, facility name, and facility permit number.]

(A). The firm identified above is the [insert "permit holder," "applicant for a standard permit," or "parent corporation of the permit holder or applicant for a standard permit"] of the following commercial preparer of sewage sludge facility, whether in the state of Louisiana or not, for which liability coverage is being demonstrated through the financial test specified in LAC 33:IX.7307.A. The amount of annual aggregate liability coverage covered by the test is shown for each facility:

(B). The firm identified above is the [insert "permit holder," "applicant for a standard permit," or "parent corporation of the permit holder or applicant for a standard permit"] of the following commercial preparer of sewage sludge facility, whether in the state of Louisiana or not, for which financial assurance for [insert "closure," "post-closure care," or "closure and post-closure care"] is demonstrated through a financial test similar to that specified in LAC 33:IX.7307.B or other forms of self-insurance. The current [insert "closure," "post-closure," or "closure and post-closure"] cost estimates covered by the test are shown for each facility:

(C). This firm guarantees through a corporate guarantee similar to that specified in [insert "LAC 33:IX.7307.B" or "LAC 33:IX.7307.A and B"], [insert "liability coverage," "closure," "post-closure care," or "closure and post-closure care"] of the following commercial preparer of sewage sludge facility, whether in the state of Louisiana or not, of which [insert the name of the permit holder or applicant] are/is a subsidiary of this firm. The amount of annual aggregate liability coverage covered by the guarantee for each facility and/or the current cost estimates for the closure and/or post-closure care so guaranteed is shown for each facility:

(D). This firm is the owner or operator of the following commercial preparer of sewage sludge facility, whether in the state of Louisiana or not, for which financial assurance for liability coverage, closure and/or post-closure care is not demonstrated either to the U.S. Environmental Protection Agency or to a state through a financial test or any other financial assurance mechanism similar to those specified in LAC 33:IX.7307.A and/or B. The current closure and/or post-closure cost estimates not covered by such financial assurance are shown for each facility:

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently-audited, year-end financial statements for the latest completed year, ended [date].

[Fill in Part A if you are using the financial test to demonstrate coverage only for the liability requirements.]

PART A. LIABILITY COVERAGE FOR ACCIDENTAL OCCURRENCES

[Fill in Alternative I if the criteria of LAC 33:IX.7307.B.8.a.i are used.]

Alternative I		
1. Amount of annual aggregate liability coverage to be demonstrated	\$ _____	
*2. Current assets	\$ _____	
*3. Current liabilities	\$ _____	
*4. Tangible net worth	\$ _____	
*5. If less than 90 percent of assets are located in the U.S., give total U.S. assets	\$ _____	
	YES	NO
6. Is line 4 at least \$10 million?	___	___
7. Is line 4 at least 6 times line 1?	___	___
*8. Are at least 90 percent of assets located in the U.S.? If not, complete line 9.	___	___
9. Is line 4 at least 6 times line 1?	___	___

[Fill in Alternative II if the criteria of LAC 33:IX.7307.B.8.a.ii are used.]

Alternative II		
1. Amount of annual aggregate liability coverage to be demonstrated	\$ _____	
2. Current bond rating of most recent issuance of this firm and name of rating service	_____	
3. Date of issuance of bond	_____	
4. Date of maturity of bond	_____	
*5. Tangible net worth	\$ _____	
*6. Total assets in U.S. (required only if less than 90 percent of assets are located in the U.S.)	\$ _____	
	YES	NO
7. Is line 5 at least \$10 million?	___	___
8. Is line 5 at least 6 times line 1?	___	___
*9. Are at least 90 percent of assets located in the U.S.? If not, complete line 10.	___	___
10. Is line 6 at least 6 times line 1?	___	___

[Fill in Part B if you are using the financial test to demonstrate assurance only for closure and/or post-closure care.]

PART B. CLOSURE AND/OR POST CLOSURE

[Fill in Alternative I if the criteria of LAC 33:IX.7307.B.8.a.i are used.]

Alternative I		
1. Sum of current closure and/or post-closure estimate (total all cost estimates shown above)	\$ _____	
*2. Tangible net worth	\$ _____	
*3. Net worth	\$ _____	
*4. Current Assets	\$ _____	
*5. Current liabilities	\$ _____	
*6. The sum of net income plus depreciation, depletion, and amortization	\$ _____	
*7. Total assets in U.S. (required only if less than 90 percent of firm's assets are located in the U.S.)	\$ _____	
	YES	NO
8. Is line 2 at least \$10 million?	___	___
9. Is line 2 at least 6 times line 1?	___	___
*10. Are at least 90 percent of the firm's assets located in the U.S.? If not, complete line 11.	___	___
11. Is line 7 at least 6 times line 1?	___	___

[Fill in Alternative II if the criteria of LAC 33:IX.7307.B.8.a.ii are used.]

Alternative II		
1. Sum of current closure and post-closure cost estimates (total of all cost estimates shown above)	\$ _____	
2. Current bond rating of most recent issuance of this firm and name of rating service	_____	
3. Date of issuance of bond	_____	
4. Date of maturity of bond	_____	
*5. Tangible net worth (If any portion of the closure and/or post-closure cost estimate is included in "total liabilities" on your firm's financial statement, you may add the amount of that portion to this line.)	\$ _____	

Alternative II		
*6. Total assets in U.S. (required only if less than 90 percent of the firm's assets are located in the U.S.)	\$ _____	
	YES	NO
7. Is line 5 at least \$10 million?	_____	_____
8. Is line 5 at least 6 times line 1?	_____	_____
9. Are at least 90 percent of the firm's assets located in the U.S.? If not, complete line 10.	_____	_____
10. Is line 6 at least 6 times line 1?	_____	_____

[Fill in Part C if you are using the financial test to demonstrate assurance for liability coverage, closure, and/or post-closure care.]

**PART C. LIABILITY COVERAGE, CLOSURE AND/OR POST-CLOSURE**

[Fill in Alternative I if the criteria of LAC 33:IX.7307.B.8.a.i are used.]

Alternative I		
1. Sum of current closure and/or post-closure cost estimates (total of all cost estimates listed above)	\$ _____	
2. Amount of annual aggregate liability coverage to be demonstrated	\$ _____	
3. Sum of lines 1 and 2	\$ _____	
*4. Total liabilities (If any portion of your closure and/or post-closure cost estimates is included in your "total liabilities" in your firm's financial statements, you may deduct that portion from this line and add that amount to lines 5 and 6.)	\$ _____	
*5. Tangible net worth	\$ _____	
*6. Net worth	\$ _____	
*7. Current assets	\$ _____	
*8. Current liabilities	\$ _____	
*9. The sum of net income plus depreciation, depletion, and amortization	\$ _____	
*10. Total assets in the U.S. (required only if less than 90 percent of assets are located in the U.S.)	\$ _____	
	YES	NO
11. Is line 5 at least \$10 million?	_____	_____
12. Is line 5 at least 6 times line 3?	_____	_____
*13. Are at least 90 percent of assets located in the U.S.? If not, complete line 14.	_____	_____
14. Is line 10 at least 6 times line 3?	_____	_____

[Fill in Alternative II if the criteria of LAC 33:IX.7307.B.8.a.ii are used.]

Alternative II		
1. Sum of current closure and/or post-closure cost estimates (total of all cost estimates listed above)	\$ _____	
2. Amount of annual aggregate liability coverage to be demonstrated	\$ _____	
3. Sum of lines 1 and 2	\$ _____	
4. Current bond rating of most recent issuance of this firm and name of rating service	_____	
5. Date of issuance of bond	_____	
6. Date of maturity of bond	_____	
*7. Tangible net worth (If any portion of the closure and/or post-closure cost estimates is included in the "total liabilities" in your firm's financial statements, you may add that portion to this line.)	\$ _____	
*8. Total assets in U.S. (required only if less than 90 percent of assets are located in the U.S.)	\$ _____	
	YES	NO
9. Is line 7 at least \$10 million?	_____	_____
10. Is line 7 at least 6 times line 3?	_____	_____
*11. Are at least 90 percent of assets located in the U.S.? If not, complete line 12.	_____	_____
12. Is line 8 at least 6 times line 3?	_____	_____

(The following is to be completed by all firms providing the financial test)  
I hereby certify that the wording of this letter is identical to the wording specified in LAC 33:IX.7307.B.8.d.

[Signature of chief financial officer for the firm]  
[Typed name of chief financial officer]  
[Title]  
[Date]

**J. Appendix J—Corporate Guarantee**

**COMMERCIAL PREPARER OF SEWAGE SLUDGE FACILITY OR  
COMMERCIAL LAND APPLIER OF BIOSOLIDS LAND  
APPLICATION SITE**

**CORPORATE GUARANTEE FOR LIABILITY COVERAGE,  
CLOSURE, AND/OR POST-CLOSURE CARE**

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of the state of [insert name of state], hereinafter referred to as guarantor, to the Louisiana Department of Environmental Quality, obligee, on behalf of our subsidiary [insert the name of the permit holder or applicant] of [business address].

**Recitals**

(A). The guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in *Louisiana Administrative Code* (LAC), Title 33, Part IX.7307.B.8.i.

(B). [Subsidiary] is the [insert "permit holder," or "applicant for a permit"], hereinafter referred to as [insert "permit holder" or "applicant"], for the following commercial preparer of sewage sludge facility covered by this guarantee: [List the agency interest number, site name, facility name, and facility permit number. Indicate for each facility whether guarantee is for liability coverage, closure, and/or post-closure and the amount of annual aggregate liability coverage, closure, and/or post-closure costs covered by the guarantee.]

[Fill in Paragraphs (C) and (D) below if the guarantee is for closure and/or post-closure.]

(C). "Closure plans" as used below refers to the plans maintained as required by LAC 33:IX.7305.C.3, for the closure and/or post-closure care of the facility identified in Paragraph (B) above.

(D). For value received from [insert "permit holder" or "applicant"], guarantor guarantees to the Louisiana Department of Environmental Quality that in the event that [insert "permit holder" or "applicant"] fails to perform [insert "closure," "post-closure care," or "closure and post-closure care"] of the above facility in accordance with the closure plan and other permit requirements whenever required to do so, the guarantor shall do so or shall establish a trust fund as specified in LAC 33:IX.7307.B.3, as applicable, in the name of [insert "permit holder" or "applicant"] in the amount of the current closure and/or post-closure estimates as specified in LAC 33:IX.7307.B.

[Fill in Paragraph (E) below if the guarantee is for liability coverage.]

(E). For value received from [insert "permit holder" or "applicant"], guarantor guarantees to any and all third parties who have sustained or may sustain bodily injury or property damage caused by sudden and accidental occurrences arising from operations of the facility covered by this guarantee that in the event that [insert "permit holder" or "applicant"] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by sudden and accidental occurrences arising from the operation of the above-named facility, or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor will satisfy such judgment(s), award(s), or settlement agreement(s) up to the coverage limits identified above.

(F). The guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the administrative authority and to [insert "permit holder" or "applicant"] that he intends to provide alternative financial assurance as specified in [insert "LAC 33:IX.7307.A" and/or "LAC 33:IX.7307.B"], as applicable, in the name of the [insert "permit holder" or "applicant"]. Within 120 days after the end of such fiscal year, the guarantor shall establish such financial assurance unless [insert "permit holder" or "applicant"] has done so.

(G). The guarantor agrees to notify the administrative authority, by certified mail, of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

(H). The guarantor agrees that within 30 days after being notified by the administrative authority of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor of [insert "liability coverage" or "closure and/or post-closure care"] he shall establish alternate financial assurance as specified in [insert "LAC 33:IX.7307.A" and/or "LAC 33:IX.7307.B"], as applicable, in the name of [insert "permit holder" or "applicant"] unless [insert "permit holder" or "applicant"] has done so.

(I). The guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: [if the guarantee is for closure and post-closure, insert "amendment or modification of the closure and/or post-closure care, the extension or reduction of the time of performance of closure and/or post-closure"], or any other modification or alteration of an obligation of the [insert "permit holder" or "applicant"] pursuant to LAC 33:IX.7305.C.3.

(J). The guarantor agrees to remain bound under this guarantee for as long as the [insert "permit holder" or "applicant"] must comply with the applicable financial assurance requirements of [insert "LAC 33:IX.7307.A" and/or "LAC 33:IX.7307.B"] for the above-listed facility, except that guarantor may cancel this guarantee by sending notice by certified mail, to the administrative authority and to the [insert "permit holder" or "applicant"], such cancellation to become effective no earlier than 90 days after receipt of such notice by both the administrative authority and the [insert "permit holder" or "applicant"], as evidenced by the return receipts.

(K). The guarantor agrees that if the [insert "permit holder" or "applicant"] fails to provide alternative financial assurance as specified in [insert "LAC 33:IX.7307.A" and/or "LAC 33:IX.7307.B"], as applicable, and obtain written approval of such assurance from the administrative authority within 60 days after a notice of cancellation by the guarantor is received by the administrative authority from guarantor, guarantor shall provide such alternate financial assurance in the name of the [insert "permit holder" or "applicant"].

(L). The guarantor expressly waives notice of acceptance of this guarantee by the administrative authority or by the [insert "permit holder" or "applicant"]. Guarantor expressly waives notice of amendments or modifications of the closure and/or post-closure plan and of amendments or modifications of the facility permit(s).

I hereby certify that the wording of this guarantee is identical to the wording specified in LAC 33:IX.7307.B.8.i, effective on the date first above written.

Effective date: \_\_\_\_\_

[Name of Guarantor]

[Authorized signature for guarantor]

[Typed name and title of person signing]

Thus sworn and signed before me this [date].

\_\_\_\_\_  
Notary Public

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(1)(c), (B)(3), and (B)(4).

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:818 (April 2002), repromulgated LR 30:233 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2519 (October 2005), LR 33:2409 (November 2007).

**§7397. Procedure to Determine the Annual Whole Biosolids Application Rate (AWBAR)—Appendix K [Formerly §7131]**

A. LAC 33:IX.7303.E.1.d.ii requires that the product of the concentration for each pollutant listed in Table 4 of LAC 33:IX.7303.E in biosolids sold or given away in a bag or other container for application to the land and the annual whole biosolids application rate (AWBAR) not cause the annual pollutant loading rate for the pollutant in Table 4 of LAC 33:IX.7303.E to be exceeded. This Appendix contains the procedure used to determine the AWBAR for a sewage sludge that does not cause the annual pollutant loading rates in Table 4 of LAC 33:IX.7303.E to be exceeded.

B. The relationship between the annual pollutant loading rate (APLR) for a pollutant and the AWBAR is shown in Equation (1).

$$APLR = C \times AWBAR \times 0.001 \quad \text{Equation (1)}$$

where:

APLR = annual pollutant loading rate in kilograms per hectare per 365-day period

C = pollutant concentration in milligrams per kilogram of total solids (dry weight basis)

AWBAR = annual whole biosolids application rate in metric tons per hectare per 365-day period (dry weight basis)

0.001 = a conversion factor

C. To determine the AWBAR, Equation (1) is rearranged into Equation (2).

$$AWBAR = \frac{APLR}{C \times 0.001} \quad \text{Equation (2)}$$

D. The procedure used to determine the AWBAR is presented below.

1. Analyze a sample of the biosolids to determine the concentration for each of the pollutants listed in Table 4 of LAC 33:IX.7303.E in the biosolids.

2. Using the pollutant concentrations from Step 1 and the APLRs from Table 4 of LAC 33:IX.7303.E, calculate an AWBAR for each pollutant using Equation (2) above.

3. The AWBAR for the biosolids is the lowest AWBAR calculated in Step 2.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(1)(c), (B)(3), and (B)(4).

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:817 (April 2002), repromulgated LR 30:233 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2417 (November 2007).

**§7399. Pathogen Treatment Processes—Appendix L [Formerly §7133]**

A. Processes to Significantly Reduce Pathogens (PSRP)

1. **Aerobic Digestion.** Sewage sludge is agitated with air or oxygen to maintain aerobic conditions for a specific mean cell residence time at a specific temperature. Values for the mean cell residence time and temperature shall be between 40 days at 20°C and 60 days at 15°C.

2. **Air Drying.** Sewage sludge is dried on sand beds or on paved or unpaved basins. The sewage sludge dries for a minimum of three months. During two of the three months, the ambient average daily temperature is above 0°C.

3. **Anaerobic Digestion.** Sewage sludge is treated in the absence of air for a specific mean cell residence time at a specific temperature. Values for the mean cell residence time and temperature shall be between 15 days at 35° to 55°C and 60 days at 20°C.

4. **Composting.** Using either the within-vessel, static aerated pile, or windrow composting methods, the temperature of the sewage sludge is raised to 40°C or higher and remains at 40°C or higher for five days. For four hours during the five days, the temperature in the compost pile exceeds 55°C.

5. Lime Stabilization. Sufficient lime is added to the sewage sludge to raise the pH of the sewage sludge to 12 after two hours of contact.

B. Processes to Further Reduce Pathogens (PFRP)

1. Composting. Using either the within-vessel composting method or the static aerated pile composting method, the temperature of the sewage sludge is maintained at 55°C or higher for three days. Using the windrow composting method, the temperature of the sewage sludge is maintained at 55°C or higher for 15 days or longer. During the period when the compost is maintained at 55°C or higher, there shall be a minimum of five turnings of the windrow.

2. Heat Drying. Sewage sludge is dried by direct or indirect contact with hot gases to reduce the moisture content of the sewage sludge to 10 percent or lower. Either the temperature of the sewage sludge particles exceeds 80°C or the wet bulb temperature of the gas in contact with the sewage sludge as the sewage sludge leaves the dryer exceeds 80°C.

3. Heat Treatment. Liquid sewage sludge is heated to a temperature of 180°C or higher for 30 minutes.

4. Thermophilic Aerobic Digestion. Liquid sewage sludge is agitated with air or oxygen to maintain aerobic conditions and the mean cell residence time of the sewage sludge is 10 days at 55° to 60°C.

5. Beta Ray Irradiation. Sewage sludge is irradiated with beta rays from an accelerator at dosages of at least 1.0 megarad at room temperature (approximately 20°C).

6. Gamma Ray Irradiation. Sewage sludge is irradiated with gamma rays from certain isotopes, such as <sup>60</sup>Cobalt and <sup>137</sup>Cesium, at dosages of at least 1.0 megarad at room temperature (approximately 20°C).

7. Pasteurization. The temperature of the sewage sludge is maintained at 70°C or higher for 30 minutes or longer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(1)(c), (B)(3), and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:817 (April 2002), repromulgated LR 30:233 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2417 (November 2007).

Herman Robinson, CPM  
Executive Counsel

0711#025

**RULE**

**Louisiana Lottery Corporation**

**Raffle Lottery Game (LAC 42:XV.103 and 105)**

The Louisiana Lottery Corporation in compliance with, and under authority of R.S. 49:950 et seq., and R.S. 47:9001 et seq., has amended the rules and regulations pertaining to the operations of on-line lottery games, in particular LAC 42:XV.103 and 105, to allow the Louisiana Lottery

Corporation to offer the following on-line lottery game: "Raffle Lottery Game."

**Title 42  
GAMING**

**Part XV. Lottery**

**Chapter 1. On Line Lottery Games**

**§103. Definitions**

A. ...

\*\*\*

*Raffle Lottery Game*—a lottery game in which a maximum designated number of chances or plays will be offered, and the winning chances or plays will be selected from those chances or plays actually sold.

\*\*\*

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Adopted by the Louisiana Lottery Corporation, February 18, 1992 and promulgated in *The Advocate*, February 28, 1992, amended October 22, 1992 and promulgated in *The Advocate*, November 3, 1992, amended October 21, 1994 and promulgated in *The Advocate*, October 28, 1994, repromulgated LR 23:64 (January 1997), amended LR 33:2418 (November 2007).

**§105. General Provisions**

A. - A.5. ...

6. Raffle Lottery Game. A series of on-line raffle lottery games which will commence at the discretion of the president, and will continue until the president publicly announces a suspension or termination date. A limited number of tickets or chances, each unique from all others, will be offered for the opportunity to win one of a number of predetermined and announced prizes.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S.47:9001 et seq.

HISTORICAL NOTE: Adopted by the Louisiana Lottery Corporation on October 22, 1992 and promulgated in *The Advocate*, November 3, 1992, amended October 21, 1994, promulgated in *The Advocate*, October 28, 1994, repromulgated LR 23:63 (January 1997), amended LR 24:1762 (September 1998), LR 33:2418 (November 2007).

Rose J. Hudson  
President

0711#023

**RULE**

**Office of the Governor  
Board of Architectural Examiners**

**Continuing Education (LAC 46:I.1315)**

Under the authority of R.S. 37:144(C) and in accordance with the provisions of R.S. 49:951 et seq., the Board of Architectural Examiners ("board") amended LAC 46:I.1315 pertaining to acceptable educational activities for an architect satisfying his or her continuing educational requirements. The existing Rule sets forth an illustrative, non-exclusive list of acceptable educational activities. This Rule adds service upon NCARB committees dealing with HSW to that list.

**Title 46**  
**PROFESSIONAL AND OCCUPATIONAL**  
**STANDARDS**

**Part I. Architects**

**Chapter 13. Administration**

**§1315. Continuing Education**

- A. - D.5. ...
- E. Acceptable Educational Activities
  - 1. - 2. ...
  - 3. Acceptable continuing educational activities in HSW include the following:
    - a. - e. ...
    - f. authoring a published paper, article or book;
    - g. successfully completing college or university sponsored courses; and
    - h. service upon NCARB committees dealing with HSW.

E.4 - I.2....

AUTHORITY NOTE: Promulgated and amended in accordance with R.S. 37:144-45.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners, LR 29:565 (April 2003), amended LR 33:2419 (November 2007).

Mary "Teeny" Simmons  
Executive Director

0711#056

**RULE**

**Office of the Governor**

**Board of Examiners of Certified Shorthand Reporters**

Continuing Education (LAC 46:XXI.Chapter 6 and 1301)

In accordance with the Administrative Procedures Act, R.S. 49:950 et seq. Notice is hereby given that the Louisiana Board of Examiners of Certified Shorthand Reporters, has amended changes made to the continuing education rule and the code of ethics rule.

**Title 46**  
**PROFESSIONAL AND OCCUPATIONAL**  
**STANDARDS**

**Part XXI. Certified Shorthand Reporters**

**Chapter 6. Continuing Education**

**§601. Continuing Education Requirement**

A. The maintenance and continued validity of any license issued by the board shall be dependent upon the satisfactory performance and completion of those continuing education requirements as established and enforced herein.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2554.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Examiners of Certified Shorthand Reporters, LR 17:32 (January 1991), amended by the Office of the Governor, Board of Examiners of Certified Shorthand Reporters, LR 33:2419 (November 2007).

**§603. Continuing Education Credits**

A. Beginning January 1, 1991, and thereafter, each certificate holder shall be required to obtain at least 12 continuing education credits during each two-year continuing education cycle. Each continuing education cycle shall consist of two consecutive years beginning January 1 of the odd-numbered year and ending December 31 of the

even-numbered year, inclusive. The board shall award one continuing education credit for each half hour of instruction time.

B. Any certificate holder is exempt from the requirement of obtaining continuing education credits for the calendar year in which the certification is initially issued. If the certificate holder is certified in an odd-numbered year, the certificate holder shall be required to obtain at least six continuing education credits during the calendar year following the year in which the certification was issued. If the certificate holder is certified in an even-numbered year, the certificate holder shall be required to obtain at least 12 continuing education credits during the two calendar years following the year in which the certification was issued.

C. Any certificate holder who is or who becomes age 65 or older during a continuing education cycle is exempt from the requirement of obtaining continuing education credits.

D. The board may suspend or revoke the certification of any certificate holder who fails to satisfy and complete the continuing education requirements stated herein, pursuant to R.S. 37:2557.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2554 and 2557.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Examiners of Certified Shorthand Reporters, LR 17:32 (January 1991), amended LR 20:412 (April 1994), amended by the Office of the Governor, Board of Examiners of Certified Shorthand Reporters, LR 33:2419 (November 2007).

**§605. Prohibited Excess Credits**

A. Any continuing education credit obtained in excess of 12 credits per reporting period shall not be applied to any subsequent or future continuing education reporting period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2554.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Examiners of Certified Shorthand Reporters, LR 17:33 (January 1991), amended by the Office of the Governor, Board of Examiners of Certified Shorthand Reporters, LR 33:2419 (November 2007).

**§607. Maintenance of Record**

A. Each certificate holder shall maintain a record of the satisfaction and completion of the continuing education credits required by the board.

B. On or before January 31 of each odd-numbered calendar year, each reporter issued a certificate by the board shall submit or cause to be submitted to the board a written record of continuing education credits earned by the reporter for the preceding two calendar years.

C. A certificate holder who teaches a course in which court reporters receive continuing education credit may receive three continuing education credits for each continuing education credit awarded to a reporter enrolled in the course. In order to receive credit for teaching activities, the certificate holder must submit to the continuing education committee the following: a copy of any promotional material or curriculum distributed to attendees, describing the course content; verification that the course was approved for continuing education credit in Louisiana; and a signed statement from the certificate holder attesting to the date and duration of training conducted by the certificate holder.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2554.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Examiners of Certified Shorthand Reporters, LR 17:33 (January 1991), amended LR 17:578 (June 1991), LR 19:1539 (December 1993), amended by the Office of the Governor, Board of Examiners of Certified Shorthand Reporters, LR 33:2419 (November 2007).

**§609. Continuing Education Guidelines**

A. The following general subject matter and enumerated continuing education credits may be approved by the board or, at the board's direction, by the continuing education committee, in the event the subject matter is germane to the professional competence of the certificate holder.

1. The board may approve seminars and workshops sponsored by the National Court Reporters Association (NCRA) or the National Verbatim Reporters Association (NVRA) at national, regional, state, or local meetings, by public institutions of higher learning, and by judicial organizations, including the following subjects:

- a. English;
- b. medical;
- c. legal;
- d. technical subjects presented by experts dealing with terminology and concepts encountered by the certificate holder during depositions and at trials;
- e. new developments and knowledge in the field directly related to making the record;
- f. general court and deposition procedures;
- g. general court and deposition transcript preparation;
- h. financial planning and administration;
- i. professionalism;
- j. office procedures and record-keeping
- k. ethics; or
- l. technology related to new developments in the field of court reporting.

2. The board may approve continuing education credit for courses conducted by universities and colleges. A certificate holder who has enrolled in an accredited university or college and has successfully completed an academic or technical course, the subject matter of which is consistent with §609(A)(1)(a-l) above, and who received a passing grade of C or better shall receive four C.E. credits per academic hour.

3. The board may recognize credits from other institutions and organizations giving continuing education courses if the course concerns subject matter directly related to enhancing the certificate holder's knowledge, ability, or competence to perform reporting duties.

4. The board may award 12 credits for the two-year C.E. cycle within which a certificate holder attains certification for the first time from a national association as follows:

- a. NCRA Registered Professional Reporter (RPR), Registered Merit Reporter (RMR), or Certified Realtime Reporter (CRR) certification; or
- b. NVRA Certified Verbatim Reporter (CVR), Certificate of Merit (CM), or Real-time Verbatim Reporter (RVR) certification.

B. A certificate holder will not receive C.E. credit unless the seminar, workshop, course, or other activity has been approved by the board or, at the board's direction, by the continuing education committee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2554.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Examiners of Certified Shorthand Reporters, LR 17:33 (January 1991), amended LR 19:1539 (December 1993), amended by the Office of the Governor, Board of Examiners of Certified Shorthand Reporters, LR 33:2420 (November 2007).

**§611. Activities Not Acceptable for Continuing Education Credits**

A. Completion of any certified pulmonary respiratory course will not be accepted for continuing education credits.

B. Attendance at or participation in tours, exhibits, entertainment, recreation, committee service, association business, home study, or on-line courses or seminars will not be accepted for continuing education credits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2554.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Examiners of Certified Shorthand Reporters, LR 21:931 (September 1995), amended by the Office of the Governor, Board of Examiners of Certified Shorthand Reporters, LR 33:2420 (November 2007).

**§613. Provider Application Process**

A. A provider must submit the following information to the continuing education committee at least 90 days before the date of a proposed training event:

- 1. The date, time, and place where the training will be conducted;
- 2. A list and detailed description or agenda of the courses that will be taught, identifying for each course the number of minutes allocated to instruction time and the number of credit hours requested;
- 3. A description of the provider's experience and qualifications to conduct such training;
- 4. A description of the registration and course attendance procedures that will be used by the provider;
- 5. A copy of the evaluation form that will be distributed to participants at the end of the training to solicit their assessment of the program's educational value and effectiveness;
- 6. A copy of the provider verification form that will be given to each participant upon completion of the training, indicating the courses completed and credit hours awarded to that participant;
- 7. The names and qualifications of instructors, identifying which courses they will be teaching in the training; and
- 8. A signed statement from the provider agreeing to submit to the continuing education committee within 15 days after the training a list of certificate holders who attended all or a portion of the training event and the number of credit hours for which each is eligible, as well as a summary of the evaluation responses completed by participants in the training.

B. The continuing education committee will respond within 30 days after receiving a completed provider application, approving or denying continuing education credit for courses in the proposed training event. The committee may request further information or clarification from the provider and may extend the 30-day period by the additional days required to receive and consider a response from the provider.

C. A provider may advertise the training as eligible for continuing education credit in Louisiana only after receiving approval from the continuing education committee.

D. Within 15 days after completion of the training, a provider must submit the following information to the continuing education committee:

1. A list of participants in the training, the courses each participant attended, and the credit hours awarded to each participant;

2. A summary of the evaluation forms completed by participants; and

3. A description of any problems encountered or complaints received during the training and the provider's plan for responding to such problems or complaints in this or any future training.

E. A provider who fails to comply with any continuing education requirements or commitments may be rendered ineligible to conduct training in Louisiana upon motion of the continuing education committee and approval by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2554.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners of Certified Shorthand Reporters, LR 33:2420 (November 2007).

### **Chapter 13. Code of Ethics**

#### **§1301. Guidelines for Professional Practice**

A. - B.10. ...

C. When a deposition is taken, an original transcript must be produced by the reporter in a prompt manner and delivered to the noticing attorney, in satisfaction of the attorney's duty to serve as custodian of the records and in order to assure full compliance with the reporter's statutory and ethical obligations.

AUTHORITY NOTE: Promulgated in accordance with R. S. 37:2553(A.), 37:2554 and 37:2557(A).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Examiners of Certified Shorthand Reporters, LR 25:1215 (July 1999), amended by the Office of the Governor, Board of Examiners of Certified Shorthand Reporters, LR 33:2421 (November 2007).

Judge Guy P. Holdridge  
Chairman

0722#036

### **RULE**

#### **Office of the Governor Division of Administration Office of State Purchasing**

#### **Use of Brand Name, LaMAS, and Multi-State Contracts (LAC 34:I.1709)**

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.) and under authority of R.S. 39:1581, Office of the Governor, Division of Administration, State Purchasing, has adopted the following Rule to require purchasing agents to compare contracts and seek best value procurements where multiple contracts exist for like or similar items.

## **Title 34 GOVERNMENT CONTRACTS, PROCUREMENT AND PROPERTY CONTROL**

### **Part I. Purchasing**

#### **Subpart 1. Central Purchasing Procedures**

#### **Chapter 17. Types of Contracts**

#### **§1709. Use of Brand Name, LaMAS (Louisiana Multiple Award Schedule), and Multi-State Contracts**

A. The state reserves the right to create and use brand name, LaMAS, and multi-state contracts (hereinafter referred to as Louisiana Price Schedules for different brands of same or similar item(s)).

B. Where Louisiana Price Schedules ("LaPS") exist for same or similar item(s) and the procurement is above \$25,000, all eligible users of these contracts will utilize the following procedures.

1. Prepare a request for responses that may include, if applicable the following: (A request for response is an informal process used to make a best value determination)

a. a performance-based statement of work that includes such things as:

- i. the work to be performed;
- ii. location of work;
- iii. period of performance;
- iv. deliverable schedule;
- v. applicable performance standards;
- vi. acceptance criteria;
- vii. any special requirements (e.g., security clearances, special knowledge, etc.);

viii. the products required using a generic description of products and functions whenever possible;

b. if necessary or applicable, a request for submittal of a project plan for performing the task and information on the contractor's experience and/or past performance performing similar tasks;

c. a best value determination is one that considers, in addition to underlying contract pricing, such factors as:

- i. probable life of the item selected;
- ii. environmental and energy efficiency

considerations;

- iii. technical qualifications;
- iv. delivery terms;
- v. warranty;
- vi. maintenance availability;
- vii. administrative costs;
- viii. compatibility of an item within the user's environment; and

ix. user's familiarity with the item or service;

d. a request for submittal of a firm-fixed total price for labor and/or products which are no higher than prices in the LaPS contract.

2. Submit the request for response to at least three LaPS contract holders, whenever available, offering functionally equivalent products and/or services that will meet the agency's needs.

3. Evaluate Responses and Select the Contractor to Receive the Order

a. After responses have been evaluated, the order shall be placed with the contractor that represents the best

value that meets the agency's needs. The ordering agency should give preference to small-entrepreneurships or small and emerging businesses when two or more contractors can provide the services and/or products at the same firm-fixed total price.

b. The ordering agency shall document in the procurement file the evaluation of the contractors' responses that formed the basis for the selection. The documentation shall identify the contractor from which the services and/or products were purchased, the services and/or products purchased, and the cost of the resulting purchase order.

c. Purchases shall not be artificially divided to avoid the requirements of this section when recurring requirements for same products are known.

d. Nothing herein relieves a state agency from following Office of Information Technology requirements for submission of IT 10 requests, for annual IT budget requests, or mid-year budget adjustment requests.

e. A listing of all contracts applicable to this Section will be maintained on the Office of State Purchasing's website <http://www.doa.louisiana.gov/osp/osp.htm>

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 33:2421 (November 2007).

Jerry Luke LeBlanc  
Commissioner

0711#034

## RULE

### Office of the Governor Division of Administration Racing Commission

Timing of Entering Next Claiming Race (LAC 35:XI.9905)

The Louisiana State Racing Commission hereby adopts LAC 35:XI.9905, "Timing of Entering Next Claiming Race," as follows.

#### Title 35 HORSE RACING

##### Part XI. Claiming Rules and Engagements

##### Chapter 99. Claiming Rule

##### §9905. Timing of Entering Next Claiming Race

A. Except as otherwise provided herein, a claimed horse shall not enter in optional or claiming races for 30 days after being claimed in a race in which the determining eligibility price is less than the price at which the horse was claimed. The day claimed shall not count, but the following calendar day shall be the first day and the horse shall be entitled to enter whenever necessary so the horse may start on the thirty-first day following the claim for any claiming price. This provision shall not apply to starter handicaps in which the weight to be carried is assigned by the handicapper. A similar rule in other states will be recognized and enforced.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141, R.S. 4:142 and R.S. 4:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Racing Commission, LR 30:1476 (July 2004), amended LR 33:2422 (November 2007).

Charles A. Gardiner III  
Executive Director

0711#003

## RULE

### Office of the Governor Real Estate Commission

Disbursement of Escrow Deposits  
(LAC 46:LXVII.2901)

Under the authority of the Louisiana Real Estate License Law, R.S. 37:1430 et seq., and in accordance with the provisions of the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., the Louisiana Real Estate Commission has amended LAC 46:LXVII.2901. The purpose of the amendment is to remove the Louisiana Real Estate Commission as a determining authority in the distribution of disputed escrow deposits.

#### Title 46 PROFESSIONAL AND OCCUPATIONAL STANDARDS

##### Part LXVII. Real Estate Subpart 1. Real Estate

##### Chapter 29. Disbursement of Escrow Deposits

##### §2901. Escrow Disputes

A. When a dispute exists in a real estate transaction regarding the ownership or entitlement to funds held in a sales escrow checking account, the broker holding the funds shall send written notice to all parties and licensees involved in the transaction. Within 90 days of the scheduled closing date or knowledge that a dispute exists, whichever occurs first, the broker shall do one of the following.

1. Disburse the funds upon the written and mutual consent of all of the parties involved.

2. Disburse the funds upon a reasonable interpretation of the contract that authorizes the broker to hold the funds. Disbursement may not occur until 10 days after the broker has sent written notice to all parties and licensees.

3. Place the funds into the registry of any court of competent jurisdiction and proper venue through a concursus proceeding.

4. Disburse the funds upon the order of a court of competent jurisdiction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:46 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1454 (August 2006), LR 33:2422 (November 2007).

Julius C. Willie  
Executive Director

0711#096

**RULE**

**Office of the Governor  
Real Estate Commission**

Purchase Agreement Forms  
(LAC 46: LXVII.3900)

Under the authority of the Louisiana Real Estate License Law, R.S. 37:1430 et seq., and in accordance with the provisions of the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., the Louisiana Real Estate Commission has amended LAC 46:LXVII.3900. The purpose of the amendment is to provide for the use of a uniform purchase agreement form in real estate transactions, as mandated by R.S. 37:1449.1, effective January 1, 2008.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part LXVII. Real Estate  
Subpart 1. Real Estate**

**Chapter 39. Presentation of Offers and Counter  
Offers; Forms**

**§3900. Purchase Agreement Forms**

A. The purchase agreement form used by licensees representing the buyer or seller in a residential real estate transaction shall be the *Residential Agreement to Buy or Sell*, or any successor thereof, prescribed by the Louisiana Real Estate Commission.

B. The *Residential Agreement to Buy and Sell*, or any successor thereof, shall be used in accordance with the provisions of R.S. 37:1449.1.

C. The official source of the prescribed purchase agreement form shall be the Louisiana Real Estate Commission website.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 33:2423 (November 2007), effective January 1, 2007.

Julius C. Willie  
Executive Director

0711#095

**RULE**

**Department of Health and Hospitals  
Board of Examiners of Nursing Facility Administrators**

Pre-Examination Requirements: Conditions Precedent  
(LAC 46:XLIX.503)

The Board of Examiners of Nursing Facility Administrators has amended LAC 46:XLIX.503 et seq., in accordance with the provisions of the Administrative Procedures Act, R.S. 49:950 et seq., and the Board of Examiners of Nursing Facility Administrators Act R.S. 37:2504A(1).

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part XLIX. Board of Examiners of Nursing Facility  
Administrators**

**Chapter 5. Examinations**

**§503. Pre-Examination Requirements: Conditions  
Precedent**

A. No person shall be admitted to or be permitted to take an examination for licensing as a nursing home administrator unless he shall have first submitted evidence satisfactory to the board that he:

1. - 4. ...

5. has successfully completed:

a. a bachelors degree from an accredited institute of higher learning; or

b. 60 hours of college education with an overall C average and three years of experience in nursing or administration in a licensed nursing facility; or

c. a two year nursing degree and at least two years experience as a director of nursing in a licensed nursing facility within the last five years prior to making application for licensure as a nursing facility administrator.

B. Nursing as used in Subparagraph A.5.b of this Section shall mean an individual who is a licensed practical nurse or registered nurse or equivalent.

C. Administration as used in Subparagraph A.5.b of this Section shall mean an individual whose primary duties include billing, accounts receivable or accounts payable.

D. Fifteen hours of such secondary education must be in the combination of the following courses: accounting, business law, economics, general health care, gerontology, management, marketing, nutrition, physical science, psychology, and sociology.

E. The provisions of Subparagraphs A.5.b, c, and d of this Section shall terminate and be of no effect beginning January 1, 2012.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2505.

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Board of Examiners of Nursing Home Administrators, April 1970, amended and promulgated LR 6:276 (June 1980), repealed and repromulgated by the Department of Health and Hospitals, Board of Examiners of Nursing Home Administrators, LR 18:181 (February 1992), amended by the Department of Health and Hospitals, Board of Examiners of Nursing Facility Administrators, LR 20:789 (July 1994), LR 33:2423 (November 2007).

Mark A. Hebert, NFA  
Executive Director

0711#001

## RULE

### Department of Health and Hospitals Board of Veterinary Medicine

Veterinary Practice  
(LAC 46:LXXXV.700, 701, and 711)

The Louisiana Board of Veterinary Medicine amends and adopts LAC 46:LXXXV.700, 701, and 711 in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953 et seq., and the Louisiana Veterinary Practice Act, R.S. 37:1569. This text is being amended to more clearly define minimum standards for veterinary medical record keeping, and clarifies the requirements for a veterinary mobile practice vehicle.

#### Title 46

### PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part LXXXV. Veterinarians

#### Chapter 7. Veterinary Practice

#### §700. Definitions

\* \* \*

*Mobile Clinic*—a vehicle with special medical or surgical facilities, including examination and treatment areas and/or surgical facilities, which provides veterinary care to small animals and/or large animals where the patient can be taken into the vehicle.

*Mobile Practice Vehicle*—a vehicle used by a veterinarian in a house call or farm call to provide veterinary care to large animals only (defined exclusively as equine, food animals, and exotics) where the patient is not taken into the vehicle. The vehicle may be an extension of a hospital or clinic, and/or may have the capabilities of providing aftercare and/or emergency care services.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 19:1328 (October 1993), amended LR 20:666 (June 1994), LR 20:1381 (December 1994), LR 24:940, 941 (May 1998), LR 24:1932 (October 1998), LR 24:2257 (December 1998), LR 27:51 (January 2001), LR 27:543 (April 2001), LR 31:3162 (December 2005), LR 33:2424 (November 2007).

#### §701. Record Keeping

A. ...

1. Each Louisiana licensed veterinarian shall maintain an individual written, or computer generated, record on each animal or herd to include identification of animal or herd, diagnosis of illness, disease or condition and treatment provided, progress notes and reassessment, and discharge summary, as follows.

a.i. Identification of the animal or herd shall include the breed, sex, description or permanent identification (if available), tattoos or other identifying marks, and the name and address of the owner.

ii. Diagnosis of illness, disease or condition shall document the animal or herd's history, signs, symptoms, complaints, objective tests such as radiographs and laboratory results, and the veterinarian's interpretation of examination findings, as well as intended goals and treatment including surgical procedures and/or drug therapy. Drug therapy shall include the names of legend drugs,

controlled substances and/or over-the-counter (OTC) products as set forth below; the date and amount administered, prescribed or dispensed; and the method of administration.

iii. A progress note shall document the animal or herd's subjective status, changes in objective findings, and progression or regression of goals and treatment. A progress note shall be documented for each visit, for continuation of treatment, for the particular diagnosed illness, disease, or condition.

iv. Reassessment shall include all elements of a progress note, as well as a revision of the treatment plan as indicated. A new diagnosis of illness, disease or condition may be warranted. Reassessment shall only be performed by the veterinarian. Reassessment, including a new diagnosis of illness, disease, or condition when applicable, shall be documented at the time such is performed.

v. Discharge summary shall document the reasons for discontinuation of care, degree or goal of achievement, and a discharge plan, if required, which shall only be documented and signed by the attending veterinarian.

vi. The documentation standards set forth above do not mandate a particular format, however, a record must include these elements, as well as any other document required by law or the board's rules. Examples include General Anaesthesia Consent Forms, Euthanasia Consent Forms, documents involving prescribing, administering, or dispensing legend drugs or controlled substances, and billing invoices or statements of services or products provided. The veterinarian shall be ultimately responsible for the content and maintenance of the record.

A.1.b. - D.9. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Veterinary Medicine, LR 6:71 (February 1980), amended by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 16:225 (March 1990), LR 19:1328 (October 1993), LR 20:1381 (December 1994), LR 23:969 (August 1997), LR 24:941 (May 1998), LR 25:872 (May 1999), LR 33:2424 (November 2007).

#### §711. Definitions for Classification of Practice Facilities

A. - E.12. ...

F. A mobile practice vehicle shall comply with the following requirements.

1. A mobile practice vehicle shall provide veterinary care to large animals only (defined exclusively as equine, food animals, and exotics) where the patient is not taken into the vehicle.

2. A mobile practice vehicle may be an extension of an existing hospital and/or clinic defined in §700. The hospital or clinic associated with the mobile practice vehicle shall operate in compliance with §711A and B.

3. The veterinarian operating or providing veterinary care in a mobile practice vehicle which does not have the capabilities of providing aftercare and/or emergency care services, and/or which is not an extension of a existing hospital or clinic, shall have a prior written agreement with a local veterinary hospital or clinic, within a 30 mile or 30 minutes travel time, to provide aftercare and/or emergency care services. The written agreement to provide aftercare and/or emergency care services in this rule shall

not be required if the mobile practice vehicle is an extension of a existing hospital or clinic, and/or has the capabilities of providing aftercare and/or emergency care services.

4. A notice of available aftercare and/or emergency care services, including the telephone number and physical address of the local veterinary hospital or clinic, or hospital or existing clinic associated with the mobile practice vehicle if applicable, shall be posted in a conspicuous place in or on the mobile practice vehicle, and a copy of the notice or information shall be given to each client prior to the provision of veterinary care.

5. The veterinarian operating or providing veterinary care in a mobile practice vehicle shall physically remain on site until all patients are discharged to their respective owners, or authorized agents.

6. The veterinarian operating or providing veterinary care in a mobile practice vehicle shall comply with the requirements for record keeping regarding the storage, maintenance and availability to the client of the medical records for the patients as set forth in the board's rules on record keeping.

7. The veterinarian operating or providing veterinary care in a mobile practice vehicle shall comply with the requirements for maintaining, administering, dispensing, and prescribing any drug, medicine, chemical, and/or biological agent as set forth in the board's rules.

8. The veterinarian operating or providing veterinary care in a mobile practice vehicle shall be responsible for the information and representations provided to the clients by the staff of the mobile practice vehicle.

9. The veterinarian operating or providing veterinary care in a mobile practice vehicle shall have his license or current renewal, in good standing, to practice veterinary medicine in Louisiana on display in a conspicuous place on or in the mobile practice vehicle.

10. The veterinarian operating or providing veterinary care in a mobile practice vehicle shall make all decisions which involve, whether directly or indirectly, the practice of veterinary medicine and will be held accountable for such decisions in accordance with the Veterinary Practice Act, the board's rules, and other applicable laws.

11. The veterinarian operating or providing veterinary care in a mobile practice vehicle shall be responsible for compliance with all standards and requirements set forth in the Veterinary Practice Act, the board's rules, and other applicable laws.

12. The veterinarian operating or providing veterinary care in a mobile practice vehicle shall provide the board, upon written demand, a copy of the written agreement with the local veterinary hospital or clinic required by this rule, if such is not the hospital or clinic associated with the mobile practice vehicle and/or the mobile practice vehicle does not have the capabilities of providing aftercare and/or emergency care services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 19:1330 (October 1993), amended LR 23:969 (August 1997), LR 24:2123 (November 1998), LR 31:3162 (December 2005), LR 33:2424 (November 2007).

Wendy D. Parrish  
Administrative Director

0711#042

## RULE

### Department of Health and Hospitals Office of the Secretary Bureau of Health Services Financing

#### Early and Periodic Screening, Diagnosis and Treatment Personal Care Services Personal Care Workers Wage Enhancement (LAC 50:XV.7321)

Editor's Note: This Rule is being printed in its entirety to correct an error upon submission. The original Rule may be viewed in the October 20, 2007 edition of the *Louisiana Register* on pages 2201-2202.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends LAC 50:XV.7321 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:9530 et seq.

#### Title 50

#### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part XV. Services for Special Populations

#### Subpart 5. Early and Periodic Screening, Diagnosis, and Treatment

#### Chapter 73. Personal Care Services

#### §7321. Reimbursement

A. ...

B. Personal Care Workers Wage Enhancement

1. Effective February 9, 2007, an hourly wage enhancement payment in the amount of \$2 will be reimbursed to providers for full-time equivalent (FTE) personal care workers who provide services to Medicaid recipients.

a. At least 75 percent of the wage enhancement shall be paid to personal care workers as wages. If less than 100 percent of the enhancement is paid in wages, the remainder, up to 25 percent shall be used to pay employer-related taxes, insurance and employee benefits.

b. The minimum hourly rate paid to personal care workers shall be the current minimum wage plus 75 percent of the wage enhancement.

2. Providers shall be required to submit a certified wage register to the department verifying the personal care workers' gross wages for the quarter ending June 30, 2005.

The wage register will be used to establish a payroll baseline for each provider. It shall include the following information:

- a. gross wage paid to the personal care worker(s);
- b. total number of direct support hours worked; and
- c. the amount paid in employee benefits.

3. A separate report shall be submitted for paid overtime.

4. The provider shall submit quarterly wage reports that verify that the 75 percent wage enhancement has been paid to the appropriate staff.

5. The provider shall submit a report, according to the department's specifications, that will be used to measure the effectiveness of the wage enhancement.

6. The wage enhancement payments reimbursed to providers shall be subject to audit by the department.

7. Noncompliance or failure to demonstrate that the wage enhancement was paid directly to personal care workers may result in:

- a. forfeiture of eligibility for wage enhancement payments;
- b. recoupment of previous wage enhancement payments;
- c. Medicaid fraud charges; and
- d. disenrollment in the Medicaid Program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:179 (February 2003), amended LR 33:2202 (October 2007), repromulgated LR 33:2425 (November 2007).

Roxane A. Townsend, M.D.  
Secretary

0711#013

## RULE

### Department of Health and Hospitals Office of the Secretary Bureau of Health Services Financing

Personal Care Attendant Services  
Licensing Standards  
(LAC 48:I.7701-7785)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing has amended LAC 48:I.7701-7785 in the Medical Assistance Program as authorized by R.S. 36:254 and 40:2120.1-7 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

#### Title 48

#### PUBLIC HEALTH—GENERAL

#### Part 1. General Administration

#### Subpart 3. Licensing and Certification

#### Chapter 77. Personal Care Attendant Services

#### §7701. Personal Care Attendant Services

A. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of

Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2426 (November 2007).

#### §7703. Responsibility for Care Planning

A. - A.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2426 (November 2007).

#### §7705. Qualification of Team Members

A. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2426 (November 2007).

#### §7707. Basic Activities

A. - A.2.b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2426 (November 2007).

#### §7709. Initial Application Process

A. All Personal Care Attendant Services Providers (PCASP) shall be licensed by the Department of Health and Hospitals (DHH). DHH is the only licensing authority for direct service providers in the state of Louisiana. It shall be unlawful to operate a PCASP agency without DHH licensure.

B. An application packet for licensing as a PCASP shall be obtained from the department. A completed application packet for the PCASP shall be submitted to and approved by the department prior to an applicant providing services.

C. A separately licensed PCASP shall not use a doing business as (DBA) name which is the same as the name of another PCASP licensed by the department.

D. An initial applicant shall submit a completed licensing packet including:

1. a licensing application with accompanying non-refundable fee;
2. a disclosure of ownership;
3. approval of the premises from the Office of the State Fire Marshal;
4. a health inspection certification of the premises from the Office of Public Health;
5. a zoning approval from local governmental authorities;
6. a criminal background check on all owners unless the owner holds a professional license issued by a state licensing board;
7. verification of sufficient assets equal to \$100,000 or the cost of three months of operation, whichever is less, or a

letter of credit equal to \$100,000 or the cost of three months of operation, whichever is less;

8. proof of financial viability; and

9. an organizational chart with the names and position titles of persons currently employed.

E. If the applicant fails to submit a completed licensing packet within 90 days of the date the initial application is received, the application shall be closed. In order to start the process again, the applicant must submit a new packet and initial licensing fee.

F. Once an applicant is notified in writing by the department that their application is approved, they must contact the department within 30 days from the date of the notice to schedule an initial survey. Failure to do so shall result in the application being denied.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2426 (November 2007).

### §7711. Surveys

A. Upon approval of the initial application by the department, the applicant will receive a letter so they may operate temporarily pending an initial licensure survey to determine if the PCASP is in compliance with all licensing regulations. Prior to scheduling and approval of the initial survey, applicants must be fully operational, in compliance with all licensing standards and providing care to only one client at the time of the initial survey. The PCASP shall notify the department at the time that services are initiated for the client and must provide the client with the department's toll free complaint line number.

B. In the event the initial licensing survey reveals that a PCASP is non-compliant with regulations and it is determined that the non-compliance poses a threat to the health and safety of a client, the department shall deny the initial license. The PCASP shall transfer the one client and close immediately.

C. The department shall conduct a licensing survey at intervals as it deems necessary to determine compliance with licensing regulations. These surveys shall be unannounced.

D. The department shall conduct a complaint investigation for a complaint received against a PCASP. A complaint survey shall be unannounced.

E. A PCASP shall make any information which the PCASP is required to have under the present requirements and any information reasonably related to assessment of compliance with these requirements available to representatives of the department.

F. If a deficient practice is cited during any licensing or complaint survey, the PCASP must submit a plan of correction and a follow-up survey may be conducted to ensure correction of the deficient practice(s).

G. Sanctions may be imposed by the department for violation of any state or federal statute, regulation or rule governing health care services as authorized by R.S. 40:2199.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2427 (November 2007).

### §7713. Issuance of License

A. The department shall have authority to issue the following types of licenses.

1. A full license may be issued only to applicants that are in substantial compliance with all applicable federal, state, and local laws, regulations and rules. The license shall be valid until the expiration date shown on the license unless the department determines otherwise.

2. A provisional license may be issued to those existing licensed PCASP's which do not meet the criteria for full licensure. A provisional license shall be valid for not more than six months.

a. A PCASP with a provisional license may be issued a full license if, at the follow-up survey, the PCASP has corrected the deficient practice(s). A full license will be issued for the remainder of the year until the PCASP's license anniversary date.

b. The department may re-issue a provisional license or initiate a revocation of a provisional license when the PCASP fails to correct deficient practice(s) within 60 days of being cited or at the time of the follow-up survey, whichever occurs first.

c. A provisional license may be issued by the department for the following reasons including, but not limited to:

i. the PCASP has more than five deficient practices during any one survey or the scope and severity of any deficiency cited places person(s) receiving services at risk for more than minimal harm;

ii. the PCASP has more than three valid complaints during a one-year period;

iii. there is a documented incident placing a client at risk; or

iv. the PCASP fails to correct deficient practices within 60 days of being cited or at the time of the follow-up survey, whichever occurs first.

B. The license shall be posted in a conspicuous place on the premises.

C. A license shall be valid only for the PCASP to which it is issued and only for that specific geographic business address. A license shall not be subject to sale, assignment, or other transfer, voluntary or involuntary.

D. Any change regarding the PCASP's name, geographical or mailing address, telephone number, operational hours, key administrative staff or any combination thereof must be reported in writing to the Health Standards Section within five working days of the change. Any change which requires a change in the license shall be accompanied by a \$25 dollar fee. A request for a duplicate license shall be accompanied by a \$25 dollar fee.

E. When a change of ownership (CHOW) occurs, the PCASP shall notify the Health Standards Section in writing at least 15 days prior to the effective date of the CHOW. A copy of the legal document showing the transfer of ownership shall be provided to Health Standards at least five

working days prior to the effective date of the CHOW. The license of a PCASP is not transferable to any other PCASP or individual. A license cannot be sold. The new owner must submit all documents required for a new license including the licensing fee.

F. A license renewal fee must be submitted annually to the Department prior to the expiration of the license.

G. A PCASP that is under license revocation or has surrendered their license may not undergo a change of ownership.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2427 (November 2007).

#### **§7715. Types of Licenses and Expiration Dates**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 25:2461 (December 1999), repealed by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2428 (November 2007).

#### **§7717. Reapplication**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 25:2461 (December 1999), repealed by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2428 (November 2007).

#### **§7719. The Denial, Revocation or Non-Renewal of a License**

A. The department may deny an application for a license, refuse to renew a license or revoke a license in accordance with the provisions of the Administrative Procedures Act. There shall be no appeal if the license has expired.

B. A PCASP's license may not be renewed or may be revoked for any of the following reasons including, but not limited to:

1. failure to be in substantial compliance with the PCASP licensing regulations;

2. failure to uphold client rights whereby deficient practice may result in harm, injury, or death of a client;

3. failure to protect a client from a harmful act of an employee including, but not limited to:

- a. abuse, neglect, exploitation, and extortion;
- b. an action posing a threat to a client or public health and safety;
- c. coercion;
- d. threat;
- e. intimidation; or
- f. harassment;

4. failure to follow federal or state law regarding notification of all suspected cases of neglect, criminal activity or mental or physical abuse, or any combination thereof;

5. knowingly making a false statement in any of the following:

- a. application for licensure;
- b. data forms;
- c. clinical records;
- d. matters under investigation by the department or Attorney General's office; or
- e. information or billing submitted for reimbursement from any payment source;

6. the use of false, fraudulent or misleading advertising;

7. an owner or administrator pleading guilty or nolo contendere to a felony, or being convicted of a felony as documented by a certified copy of the court record. If the applicant is a firm or corporation, a license may also be immediately denied or revoked when any of its members, officers or the person designated to manage or supervise client care is convicted of a felony. For purposes of this paragraph, conviction of a felony means and includes:

a. conviction of a criminal offense related to that person's involvement in any program under Medicaid or a Title XIX services program since the inception of these programs;

b. conviction of a felony relating to violence, abuse, and/or neglect of a person; or

c. conviction of a felony related to the misappropriation of property belonging to another person;

8. failure to comply with all reporting requirements in a timely manner as requested by the department;

9. documented evidence that the PCASP or any representative thereof has offered or received a bribe, harassed, solicited or received anything of economic value for the referral of any individual to use the services of any particular PCASP; or

10. non-operational status.

C. In the event a license is revoked, denied renewal or voluntarily surrendered, no other Personal Care, Respite, Supported Independent Living, Adult Day Care or Family Support service license application shall be accepted by the department from the owners of the revoked or denied agency for review and approval for a period of two years from the date of the final disposition of the revocation or denial action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2428 (November 2007).

#### **§7720. Notice and Appeal**

A. Notice of the department's actions against the PCASP shall be given in accordance with the current state statutes.

B. Administrative Reconsideration. A PCASP may request an administrative reconsideration of a deficiency which is the basis of the department's action. An administrative reconsideration is an informal process conducted by a designated department official who did not

participate in the initial decision to impose the adverse action. An administrative reconsideration shall be made solely on the basis of documents or oral presentations, or both, before the designated official and shall include the survey report, a statement of deficiency and any documentation the service provider may submit to the department when requesting the reconsideration. Correction of a deficiency shall not be a basis for reconsideration and an administrative reconsideration hearing may be held. A department spokesman and a PCASP services spokesman may make an oral presentation to the designated official during the administrative reconsideration. An administrative reconsideration is not in lieu of the administrative appeals process and does not extend the time limits for filing an administrative appeal under the provisions of the Administrative Procedure Act. The designated official shall have the authority to affirm the decision, to revoke the decision, to affirm part or revoke in part, or to request additional information from either the department or the PCASP.

C. Administrative Appeal Process. Upon denial or revocation of a license, or imposition of a fine by the department, the provider shall have the right to appeal such action by submitting a written request to the Bureau of Appeals within 30 days after receipt of the notification of the denial, revocation of a license or imposition of a fine.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2428 (November 2007).

#### **§7721. Terms of the Licensure**

A. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2429 (November 2007).

#### **§7723. Services for Different Handicaps**

A. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2429 (November 2007).

#### **§7725. Quarterly Staffing Report**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repealed by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2429 (November 2007).

#### **§7727. Licensing Inspections**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repealed by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2429 (November 2007).

#### **§7729. New Construction, Renovations of Existing Facilities and Conversion of Any Residential or Commercial Building for Residential Care**

A. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2429 (November 2007).

#### **§7731. General Waiver**

A. The department shall have the authority to waive any of those standards which are inapplicable to the type of service to be rendered.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2429 (November 2007).

#### **§7733. Personal Care Attendant Services**

A. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2429 (November 2007).

#### **§7735. General Requirements**

A. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2429 (November 2007).

#### **§7736. Operational Requirements**

A. In order to be considered operational and retain licensed status the provider must have at least one employee on duty at the business location a minimum of eight hours a day Monday through Friday. There must be direct care staff employed and available to be assigned to provide care and services to persons receiving services at all times. Staff must be designated to receive calls after business hours (including weekends and holidays) on a telephone owned by the business 24 hours per day, seven days a week within the region in which the provider is located.

B. Office Space. The PCASP's office shall be the physical site where the agency maintains staff to perform administrative functions, maintains personnel records, maintains client service records and holds itself out to the public as being a location of business for receipt of client

referrals and provision of client services. The office shall have a separate entrance and exit from any other entity, business or trade. If office space is shared with another health related entity, the PCASP must operate independently and have a clearly defined scope of services.

C. Office space must meet the following requirements:

1. be in commercial office space, or if located in a residential area, it must be zoned for business and must be used solely for the operation of the business (may not be the personal residence of the business owner or any other individual);

2. comply with guidelines set forth by the Louisiana Office of the State Fire Marshal;

3. have a business telephone number that is accessible to persons receiving services 24 hours a day, seven days a week;

4. have a business fax number that is operational 24 hours a day, seven days a week;

5. have hours of operation posted in a location outside of the business that is easily visible to persons receiving services and the general public; and

6. have space for storage of client records in an area that is secure and does not breach confidentiality of personal health information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2429 (November 2007).

### **§7737. Governing Body**

A. - A.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2430 (November 2007).

### **§7739. Responsibilities of a Governing Body**

A. - A.11. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2430 (November 2007).

### **§7741. Accessibility of Executive**

A. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2430 (November 2007).

### **§7743. Documentation of Authority to Operate**

A. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2430 (November 2007).

### **§7745. Administrative File**

A. - A.9. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2430 (November 2007).

### **§7747. Organizational Communication**

A. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2430 (November 2007).

### **§7749. Accounting**

A. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2430 (November 2007).

### **§7751. Confidentiality and Security of Files**

A. - G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2430 (November 2007).

### **§7753. Administrative and Client Records**

A. - E.7. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2430 (November 2007).

### **§7755. Program Description**

A. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office

of the Secretary, Bureau of Health Services Financing, LR 33:2430 (November 2007).

#### **§7757. Transportation**

A. - B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2431 (November 2007).

#### **§7759. External Professional Service**

A. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2431 (November 2007).

#### **§7761. Personnel Policies**

A. A PCASP shall have written personnel policies and procedures that include, but are not limited to:

1. a plan for recruitment, screening, orientation, in-service training, staff development, supervision and performance evaluation;

2. written job descriptions for each staff position, including volunteers;

3. a health assessment, to include at a minimum, evidence that the employee is free of active tuberculosis and that staff are retested on a time schedule as mandated the Office of Public Health;

4. criminal history background checks for all unlicensed personnel which include a security check of the National Sex Offender Public Registry;

5. an employee grievance procedure;

6. abuse reporting procedures that require all employees to report any incidents of abuse or mistreatment whether the abuse or mistreatment is committed by another staff member, a family member or any other person; and

7. prevention of discrimination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2431 (November 2007).

#### **§7763. Nondiscrimination**

A. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2431 (November 2007).

#### **§7765. Recruitment**

A. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2431 (November 2007).

#### **§7767. Screening**

A. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2431 (November 2007).

#### **§7769. Orientation**

A. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2431 (November 2007).

#### **§7771. Training**

A. All non-licensed personal care attendant services direct care staff must meet minimum mandatory qualifications and requirements for direct service workers as required by R.S. 40:2179-2179.1 or a subsequently amended statute and be registered on the Louisiana Direct Service Worker Registry.

B. A provider shall ensure that each direct service worker completes no less than 16 hours of face to face training per year to ensure continuing competence. The training must address areas of weakness as determined by the workers' performance reviews and may address the special needs of clients. Orientation and normal supervision shall not be considered for meeting this requirement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2431 (November 2007).

#### **§7772. Required Staffing**

A. The provider shall be staffed at all times in sufficient numbers to properly safeguard the health, safety and welfare of the persons receiving services. Sufficient support staff shall be employed to ensure provision of personal care services as required by the comprehensive plan of care. There shall be back-up staff available to ensure that services to the client are uninterrupted in the event that the primary direct care worker for the client is unable to report to work.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2431 (November 2007).

#### **§7773. Evaluation**

A. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2431 (November 2007).

**§7775. Personnel Practices**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repealed by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2432 (November 2007).

**§7777. Abuse Reporting**

A. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2432 (November 2007).

**§7779. Basic Rights**

A. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2432 (November 2007).

**§7781. Self-Advocacy**

A. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2432 (November 2007).

**§7783. Advocacy**

A. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2432 (November 2007).

**§7785. Grievance Procedures for Clients**

A. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office

of the Secretary, Bureau of Health Services Financing, LR 33:2432 (November 2007).

Roxane A. Townsend, M.D.  
Secretary

0711#074

**RULE**

**Department of Health and Hospitals  
Office of the Secretary  
Bureau of Health Services Financing**

**Respite Care—Licensing Standards  
(LAC 48:I.8101-8167)**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing has amended LAC 48:I.8101-8167 in the Medical Assistance Program as authorized by R.S. 36:254 and 40:2120.1-7 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

**Title 48**

**PUBLIC HEALTH—GENERAL**

**Part 1. General Administration**

**Subpart 3. Licensing and Certification**

**Chapter 81. Respite Care**

**§8101. Initial Application Process**

A. All respite care services providers (RCSP) shall be licensed by the Department of Health and Hospitals (DHH). DHH is the only licensing authority for direct service providers in the state of Louisiana. It shall be unlawful to operate an RCSP agency without DHH licensure.

B. An application packet for licensing as an RCSP shall be obtained from the department. A completed application packet for the RCSP shall be submitted to and approved by the department prior to an applicant providing services.

C. A separately licensed RCSP shall not use a doing business as (DBA) name which is the same as the name of another RCSP licensed by the department.

D. An initial applicant shall submit a completed licensing packet including:

1. a licensing application with accompanying non-refundable fee;
2. a disclosure of ownership;
3. approval of the premises from the Office of the State Fire Marshal;
4. a health inspection certification of the premises from the Office of Public Health;
5. a zoning approval from local governmental authorities;
6. a criminal background check on all owners unless the owner holds a professional license issued by a state licensing board;
7. verification of sufficient assets equal to \$100,000 or the cost of three months of operation, whichever is less, or a letter of credit equal to \$100,000 or the cost of three months of operation, whichever is less;
8. proof of financial viability; and

9. an organizational chart with the names and position titles of persons currently employed.

E. If the applicant fails to submit a completed licensing packet within 90 days of the date the initial application is received, the application shall be closed. In order to start the process again, the applicant must submit a new packet and initial licensing fee.

F. Once an applicant is notified in writing by the department that their application is approved, they must contact the department within 30 days from the date of the notice to schedule an initial survey. Failure to do so shall result in the application being denied.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2432 (November 2007).

### **§8103. Review of Applications**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repealed by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2433 (November 2007).

### **§8104. Surveys**

A. Upon approval of the initial application by the department, the applicant will receive a letter so they may operate temporarily pending an initial licensure survey to determine if the RCSP is in compliance with all licensing regulations. Prior to scheduling and approval of the initial survey, applicants must be fully operational, in compliance with all licensing standards and providing care to only one client at the time of the initial survey. The RCSP shall notify the department at the time that services are initiated for the client and must provide the client with the department's toll free complaint line number.

B. In the event the initial licensing survey reveals that a RCSP is non-compliant with regulations and it is determined that the non-compliance poses a threat to the health and safety of a client, the department shall deny the initial license. The RCSP shall transfer the one client and close immediately.

C. The department shall conduct a licensing survey at intervals as it deems necessary to determine compliance with licensing regulations. These surveys shall be unannounced.

D. The department shall conduct a complaint investigation for a complaint received against an RCSP. A complaint survey shall be unannounced.

E. An RCSP shall make any information which the RCSP is required to have under the present requirements and any information reasonably related to assessment of compliance with these requirements available to representatives of DHH.

F. If a deficient practice is cited during any licensing or complaint survey, the RCSP must submit a plan of correction and a follow-up survey may be conducted to ensure correction of the deficient practice(s).

G. Sanctions may be imposed by the department for violation of any state or federal statute, regulation or rule governing health care services as authorized by R.S. 40:2199.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2433 (November 2007).

### **§8105. Issuance of a License**

A. The department shall have authority to issue the following types of licenses.

1. A full license may be issued only to applicants that are in substantial compliance with all applicable federal, state, local laws, regulations and rules. The license shall be valid until the expiration date shown on the license unless the department determines otherwise.

2. A provisional license may be issued to those existing licensed RCSP which do not meet the criteria for full licensure. A provisional license shall be valid for not more than six months.

a. An RCSP with a provisional license may be issued a full license if, at the follow-up survey, the RCSP has corrected the deficient practice(s). A full license will be issued for the remainder of the year until the RCSP's license anniversary date.

b. The department may re-issue a provisional license or initiate a revocation of a provisional license when the RCSP fails to correct deficient practice(s) within 60 days of being cited or at the time of the follow-up survey, whichever occurs first.

c. A provisional license may be issued by the department for the following reasons including, but not limited to:

i. the RCSP has more than five deficient practices during any one survey or the scope and severity of any deficiency cited places person(s) receiving services at risk for more than minimal harm;

ii. the RCSP has more than three valid complaints during a one-year period;

iii. there is a documented incident placing a client at risk; or

iv. the RCSP fails to correct deficient practices within 60 days of being cited or at the time of the follow-up survey, whichever occurs first.

B. The license shall be posted in a conspicuous place on the premises.

C. A license shall be valid only for the RCSP to which it is issued and only for that specific geographic business address. A license shall not be subject to sale, assignment, or other transfer, voluntary or involuntary.

D. Any change regarding the RCSP's name, geographical or mailing address, telephone number, operational hours or key administrative staff or any combination thereof, must be reported in writing to the Health Standards Section within five working days of the change. Any change which requires a change in the license shall be accompanied by a \$25 fee. A request for a duplicate license shall be accompanied by a \$25 fee.

E. When a change of ownership (CHOW) occurs, the RCSP shall notify the Health Standards Section in writing at least 15 days prior to the effective date of the CHOW. A copy of the legal document showing the transfer of ownership shall be provided to Health Standards at least five working days prior to the effective date of the CHOW. The license of an RCSP is not transferable to any other RCSP or individual. A license cannot be sold. The new owner must submit all documents required for a new license including the licensing fee.

F. A license renewal fee must be submitted annually to the department prior to the expiration of the license.

G. An RCSP that is under license revocation or has voluntarily surrendered their license may not undergo a change of ownership.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2433 (November 2007).

### **§8107. Types of Licenses and Expiration Dates**

Repealed.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 25:24621 (December 1999), repealed by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2434 (November 2007).

### **§8109. Reapplication**

Repealed.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 25:2461 (December 1999), repealed by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2434 (November 2007).

### **§8111. The Denial, Revocation, or Non-Renewal of a License**

A. The department may deny an application for a license, refuse to renew a license or revoke a license in accordance with the provisions of the Administrative Procedures Act. There shall be no appeal if the license has expired.

B. An RCSP's license may not be renewed or may be revoked for any of the following reasons including, but not limited to:

1. failure to be in substantial compliance with the RCSP licensing regulations;
2. failure to uphold client rights whereby deficient practice may result in harm, injury or death of a client;
3. failure to protect a client from a harmful act of an employee including, but not limited to:
  - a. abuse, neglect, exploitation and extortion;

- b. an action posing a threat to a client or public health and safety;
- c. coercion;
- d. threat;
- e. intimidation; or
- f. harassment;

4. failure to follow federal or state law regarding notification of all suspected cases of neglect, criminal activity, or mental or physical abuse, or any combination thereof;

5. knowingly making a false statement in any of the following:

- a. application for licensure;
- b. data forms;
- c. clinical records;
- d. matters under investigation by the department or Attorney General's office; or
- e. information or billing submitted for reimbursement from any payment source;

6. the use of false, fraudulent or misleading advertising;

7. an owner or administrator pleading guilty or nolo contendere to a felony or being convicted of a felony as documented by a certified copy of the court record. If the applicant is a firm or corporation, a license may also be immediately denied or revoked when any of its members, officers, or the person designated to manage or supervise client care is convicted of a felony. For purposes of this Paragraph, conviction of a felony means and includes:

- a. conviction of a criminal offense related to that person's involvement in any program under Medicaid or a Title XIX services program since the inception of these programs;

- b. conviction of a felony relating to violence, abuse, and/or neglect of a person; or

- c. conviction of a felony related to the misappropriation of property belonging to another person;

8. failure to comply with all reporting requirements in a timely manner as requested by the department;

9. documented evidence that the RCSP or any representative thereof has offered or received a bribe, harassed, solicited or received anything of economic value for the referral of any individual to use the services of any particular RCSP; or

10. non-operational status.

C. In the event a license is revoked or denied renewal or voluntarily surrendered their license, no other Personal Care Assistant, Respite, Supervised Independent Living, Adult Day Care or Family Support service license application shall be accepted by the department from the owners of the revoked or denied agency for review and approval for a period of two years from the date of the final disposition of the revocation or denial action.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2434 (November 2007).

### **§8112. Notice and Appeal**

A. Notice of the department's actions against the RCSP shall be given in accordance with the current state statutes.

B. Administrative Reconsideration. An RCSP may request an administrative reconsideration of a deficiency which is the basis of the department's action. An administrative reconsideration is an informal process conducted by a designated department official who did not participate in the initial decision to impose the adverse action. An administrative reconsideration shall be made solely on the basis of documents or oral presentations, or both, before the designated official and shall include the survey report, a statement of deficiency and any documentation the service provider may submit to the department when requesting the reconsideration. Correction of a deficiency shall not be a basis for reconsideration and an administrative reconsideration hearing may be held. A department spokesman and an RCSP services spokesman may make an oral presentation to the designated official during the administrative reconsideration. An administrative reconsideration is not in lieu of the administrative appeals process and does not extend the time limits for filing an administrative appeal under the provisions of Administrative Procedure Act. The designated official shall have the authority to affirm the decision, to revoke the decision, to affirm part or revoke in part or to request additional information from either the department or the RCSP.

C. Administrative Appeal Process. Upon denial or revocation of a license or imposition of a fine by the department, the provider shall have the right to appeal such action by submitting a written request to the Bureau of Appeals within 30 days after receipt of the notification of the denial, revocation of a license, or imposition of a fine.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2435 (November 2007).

### **§8113. Terms of the License**

A. Licenses in Louisiana specify the service which the provider is licensed to provide, the maximum number of clients which the provider may serve at one time, the ages which may be served and the types of handicapping conditions which may be served. These terms must be continuously met by the provider; failure to do so is grounds for revocation of the license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2435 (November 2007).

### **§8115. Services for Different Handicaps**

A. A provider will not be licensed to serve more than one program office type of handicapped client until the provider has been in operation and has consistently met applicable requirements for one year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987),

repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2435 (November 2007).

### **§8117. Quarterly Staffing Report**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repealed by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2435 (November 2007).

### **§8119. Licensing Inspections**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repealed by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2435 (November 2007).

### **§8121. New Construction, Renovations of Existing Facilities and Conversion of Any Residential or Commercial Building for Residential Care**

A. The building site shall be approved by the Division of Licensing and Certification prior to beginning of any construction. The site shall have good drainage and not subject to flooding. The site shall not be located in an area that would present a hazard to those being served. Plans and specifications must be prepared by a licensed architect or engineer. Three sets of complete plans and specifications must be submitted for approval to the Division of Licensing and Certification. The Division of Licensing and Certification will forward one set to the Office of Preventive and Public Health Services, and one set to the Office of State Fire Marshal.

B. The third set will be reviewed by the Division of Licensing and Certification and the Division of Engineering and Consulting Services. All three agencies must issue an approval of the plans and specifications prior to beginning construction. The Division of Licensing and Certification will issue the letter authorizing the start of construction after receiving approval from the Office of Preventive and Public Health Services, the Office of State Fire Marshal, and the Division of Engineering and Consulting Services.

C. The Division of Licensing and Certification, the Office of Preventive and Public Health Services, and the Office of State Fire Marshal, shall have the authority to inspect the project at any stage to insure that the approved plans and specification are being followed. Final approval of the building must be obtained from these agencies after the building is completed and before it is occupied. A license shall issued by the Division of Licensing and Certification only after these final approvals have been obtained.

D. It shall be the responsibility of the provider to obtain any approvals from local authorities (such as zoning, building, fire, etc.) that may be needed in the particular city or parish.

E. All providers must be in conformity with the ASNI standards for the handicapped.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2436 (November 2007).

#### **§8123. General Waiver**

A. The department shall have the authority to waive any of those standards which are inapplicable to the type of service to be rendered.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2436 (November 2007).

#### **§8125. Respite Care Services**

A. In addition to core requirements, respite care service providers are required to meet the requirements in the respite care service module. Some core requirements may be excepted. Non-programmatic standards do not apply to in-home respite care.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2436 (November 2007).

#### **§8127. General Requirements**

##### **A. General Requirements**

1. A provider shall allow designated representatives of DHHR in the performance of their mandated duties to inspect all aspects of a provider's functioning which impact on clients and to interview any staff member or client (if the client agrees to said interview).

a. A provider shall make any information which the provider is required to have under the present requirements and any information reasonably related to assessment of compliance with these requirements available to DHHR.

##### **B. Governing Body**

1. A provider shall have an identifiable governing body with responsibility for and authority over the policies and activities of the program/agency.

a. A provider shall have documents identifying all members of the governing body; their addresses; their terms of membership; and officers of the governing body; and terms of office of any officers.

b. When the governing body of a provider is comprised of more than one person, the governing body shall hold formal meetings at least twice a year.

c. When the governing body is composed of more than one person, a provider shall have written minutes of all formal meetings of the governing body, and by-laws specifying frequency of meetings and quorum requirements.

##### **C. Responsibilities of a Governing Body**

1. The governing body of a provider shall:

a. ensure the provider's compliance and conformity with the provider's charter;

b. ensure the provider's continual compliance and conformity with all relevant federal, state, local, and municipal laws and regulations;

c. ensure that the provider is adequately funded and fiscally sound;

d. review and approve the provider's annual budget;

e. ensure the review and approval of an annual external audit;

f. designate a person to act as chief administrator and delegate sufficient authority to this person to manage the provider;

g. formulate and annually review, in consultation with the chief administrator, written policies concerning the provider's philosophy, goals, current services, personnel practices job descriptions and fiscal management;

h. annually evaluate the chief administrator's performance;

i. have the authority to dismiss the chief administrator;

j. meet with designated representatives of DHHR whenever required to do so;

k. inform designated representatives of DHHR prior to initiating any substantial changes in the services provided by the provider.

##### **D. Accessibility of Executive**

1. The chief administrator or a person authorized to act on behalf of the chief administrator shall be accessible to staff or designated representatives of DHHR at all times.

##### **E. Documentation of Authority to Operate**

1. A private provider shall have documentation of its authority to operate under state law.

##### **F. Administrative File**

1. A provider shall have an administrative file including:

a. documents identifying the governing body;

b. list of members and officers of the governing body and their addresses and terms of membership;

c. minutes of formal meetings and by-laws of the governing body, if applicable;

d. documentation of the provider's authority to operate under state law;

e. organizational chart of the provider;

f. all leases, contracts and purchase-of-service agreements to which the provider is a party;

g. insurance policies;

h. annual budgets and audit reports;

i. master list of all providers used by the provider.

##### **G. Organizational Communication**

1. A provider shall establish procedures to assure adequate communication among staff to provide continuity of services to the client.

2. Any direct care employee of a provider shall have access to information from clients case records that is necessary for effective performance of the employee's assigned tasks.

3. A provider shall establish procedures which facilitate participation and feedback from staff, clients, families, and when appropriate, the community at large. This will be used in areas such as policy-making, planning and program development.

#### H. Accounting

1. A provider shall establish a system of business management and staffing to assure maintenance of complete and accurate accounts, books and records in keeping with generally accepted accounting principles.

2. A provider shall demonstrate fiscal accountability through regular recording of its finances and annual external audit.

3. A provider shall not permit public funds to be paid, or committed to be paid, to any person to which any of the members of the governing body, administrative personnel, or members of the immediate families of members of the governing body or administrative personnel have any direct or indirect financial interest, or in which any of these persons serve as an officer or employee, unless the services or goods involved are provided at a competitive cost or under terms favorable to the facility. The provider shall have a written disclosure of any financial transaction with the facility in which member of the governing body, administrative personnel, or his/her immediate family is involved.

#### I. Confidentiality and Security of Files

1. A provider shall have written procedures for the maintenance, security, and confidentiality of records. This shall include specifying who shall supervise the maintenance of records, and who shall have custody of records. This procedure shall also state to whom records can be released and the procedure for doing so. Records, including client as well as administrative, shall be the property of the provider and the provider, as custodian, shall secure records against loss, tampering, or unauthorized use.

2. Employees of the provider shall not disclose or knowingly permit the disclosure of any information concerning the agency, the clients or his/her family, directly or indirectly, to any unauthorized person.

3. When the client is of majority age and noninterdicted, a provider shall obtain the client's written, informed permission prior to releasing any information from which the client or his/her family might be identified.

4. When a client is a minor or is interdicted, a provider shall obtain written, informed consent from the legally responsible person prior to releasing any information from which the client or his/her family might be identified.

5. A provider shall, upon request, make available information in the case records to the client, the legally responsible person. If, in the professional judgment of the administration of the provider, it is felt that information contained in the record would be damaging to a client, that information (only) may be withheld from the client except under court order. The provider may charge a reasonable fee for providing the above records.

6. A provider may use material from case records for teaching or research purposes, development of the governing body's understanding and knowledge or the provider's services, or similar educational purposes, provided that names are deleted, providers which have on-grounds educational programs shall comply with federal and state laws governing educational records.

7. A provider shall not release a personnel file without the employee's written permission except in accordance with state law.

#### J. Records—Administrative and Client

1. A provider shall ensure that all entries in records are legible, signed by the person making the entry and accompanied by the date on which the entry was made.

2. All records shall be maintained in an accessible, standardized order and format and shall be retained and disposed of in accordance with state laws.

3. A provider shall have sufficient space, facilities and supplies for providing effective record keeping services.

4. A provider shall have a written record for each client which shall include:

a. the name, sex, race, birthdate of the client, address of the client's current place of employment, school, or day provider, as appropriate;

b. other identification date including court status and/or legal status;

c. the names, addresses and phone numbers of other persons or providers involved with the client's plan/case. This shall include the client's physician;

d. a provider shall maintain limited health records including a description of any serious or life threatening medical condition of the client. This shall include a description of any current treatment or medication necessary for the treatment of any serious or life threatening medical condition or known allergies.

5. A provider shall have a written record for each employee which includes:

a. the application for employment and/or résumé;

b. references;

c. any required medical examination;

d. all required documentation of appropriate status which includes:

i. valid driver's license for operating provider vehicles or transporting clients;

ii. professional credentials/certification required to hold the position;

e. periodic, at least annual, performance evaluation;

f. employee's starting and termination dates along with salary paid;

g. employee shall have reasonable access to his/her file and shall be allowed to add any written statement he/she wishes to make to the file at any time.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2436 (November 2007).

#### **§8128. Operational Requirements**

A. In order to be considered operational and retain licensed status the provider must have at least one employee on duty at the business location a minimum of eight hours per day Monday through Friday. There must be direct care staff employed and available to be assigned to provide care and services to persons receiving services at all times. Staff must be designated to receive calls after business hours (including weekends and holidays) on a telephone owned by the business 24 hours per day, seven days a week, within the region in which the provider is located.

B. Office Space. The RCSP's office shall be the physical site where the agency maintains staff to perform administrative functions, maintains personnel records, maintains client service records and holds itself out to the public as being a location of business for receipt of client referrals and provision of client services. The office shall have a separate entrance and exit from any other entity, business or trade. If office space is shared with another health related entity, the RCSP must operate independently and have a clearly defined scope of services.

C. Office space must meet the following requirements:

1. be in commercial office space or if located in a residential area, it must be zoned for business and must be used solely for the operation of the business (may not be the personal residence of the business owner or any other individual);

2. comply with guidelines set forth by the Louisiana Office of the State Fire Marshal;

3. have a business telephone number that is accessible to persons receiving services 24 hours a day, seven days a week;

4. have a business fax number that is operational 24 hours a day, seven days a week;

5. have hours of operation posted in a location outside of the business that is easily visible to persons receiving services and the general public; and

6. have space for storage of client records in an area that is secure and does not breach confidentiality of personal health information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2437 (November 2007).

### **§8129. Program and Services**

A. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2438 (November 2007).

### **§8130. Required Staffing**

A. The provider shall be staffed at all times in sufficient numbers to properly safeguard the health, safety and welfare of the persons receiving services as required by these regulations. Sufficient support staff shall be employed to ensure provision of respite care services as required by the comprehensive plan of care. There shall be back-up staff available to ensure that services to the client are uninterrupted in the event that the primary direct care worker for the client is unable to report to work.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2438 (November 2007).

### **§8131. Personnel Policies**

A. A RCSP shall have written personnel policies and procedures that include, but are not limited to:

1. a plan for recruitment, screening, orientation, in-service training, staff development, supervision and performance evaluation;

2. written job descriptions for each staff position, including volunteers;

3. a health assessment to include at a minimum, evidence that the employee is free of active tuberculosis and that staff are retested on a time schedule as mandated by the Office of Public Health;

4. criminal history background checks for all unlicensed personnel which includes a security check of the National Sex Offender Public Registry;

5. an employee grievance procedure;

6. abuse reporting procedures that require all employees to report any incidents of abuse or mistreatment whether the abuse or mistreatment is committed by another staff member, a family member or any other person; and

7. prevention of discrimination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2438 (November 2007).

### **§8132. Training**

A. All non-licensed respite care services direct care staff must meet minimum mandatory qualifications and requirements for direct service workers as required by R.S. 40:2179-2179.1 or a subsequently amended statute, and be registered on the Louisiana Direct Service Worker Registry.

B. A provider shall ensure that each direct service worker completes no less than 16 hours of face to face training per year to ensure continuing competence. The training must address areas of weakness as determined by the workers' performance reviews and may address the special needs of clients. Orientation and normal supervision shall not be considered for meeting this requirement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2438 (November 2007).

### **§8133. Client Rights**

A. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2438 (November 2007).

### **§8135. Individual Service Plan**

A. - B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2438 (November 2007).

#### **§8137. Daily Aspects of Care**

A. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2439 (November 2007).

#### **§8139. Clothing**

A. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2439 (November 2007).

#### **§8141. Health Aspects of Care**

A. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2439 (November 2007).

#### **§8143. Food and Nutrition**

A. - B.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2439 (November 2007).

#### **§8145. Money**

A. - B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2439 (November 2007).

#### **§8147. Discharge**

A. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2439 (November 2007).

#### **§8149. Privacy**

A. - B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2439 (November 2007).

#### **§8151. Contact with Family and Collaterals**

A. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2439 (November 2007).

#### **§8153. Participation in Program Development**

A. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2439 (November 2007).

#### **§8155. Disciplinary Safeguards**

A. - I. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2439 (November 2007).

#### **§8157. Furnishings and Equipment for Center Based Respite Care**

A. - A.4.b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2439 (November 2007).

#### **§8159. Play Space and Equipment**

A. - B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2439 (November 2007).

#### **§8161. Health and Safety**

A. - J. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2439 (November 2007).

**§8165. Maintenance**

A. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2440 (November 2007).

**§8167. In or Out-of-Home**

A. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2440 (November 2007).

Roxane A. Townsend, M.D.  
Secretary

0711#073

**RULE**

**Department of Health and Hospitals  
Office of the Secretary  
Office for Citizens with Developmental Disabilities**

Home and Community-Based Services Waivers—Children's Choice Service Cap Increase(LAC 50:XXI.11301)

The Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities has amended LAC 50:XXI.11301 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the Administrative Procedure Act R.S. 49:950 et seq.

**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE  
Part XXI. Home and Community-Based Services  
Waivers**

**Subpart 9. Children's Choice**

**Chapter 113. Service**

**§11301. Service Cap**

A. Effective May 20, 2007, Children's Choice services are capped at \$17,000 per individual per plan of care year.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health

Services Financing, LR 28:1983 (September 2002), amended by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:2440 (November 2007).

Implementation of the provisions of this Rule shall be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

Roxane A. Townsend, M.D.  
Secretary

0711#076

**RULE**

**Department of Health and Hospitals  
Office of the Secretary  
Office for Citizens with Developmental Disabilities**

Home and Community Based Services Waivers—New Opportunities Waiver—Emergency Opportunities (LAC 50:XXI.13707)

The Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities has amended LAC 50:XXI.13707 as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:95(B)(1) et seq.

**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE  
Part XXI. Home and Community Based Services  
Waivers**

**Subpart 11. New Opportunities Waiver**

**Chapter 137. General Provisions**

**§13707. Programmatic Allocation of Waiver Opportunities**

A. - C.6. ...

7. One hundred and sixty-six waiver opportunities shall be used for qualifying individuals with developmental disabilities who require emergency waiver services. In the event that a waiver opportunity is vacated, the opportunity will be returned to the emergency pool for support planning based on the process for prioritization. Once the 166 waiver opportunities are filled, then supports and services based on the priority determination system will be identified and addressed through other resources currently available for individuals with developmental disabilities.

C.8. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 31:2900 (November 2005), amended LR 33:2440 (November 2007).

Roxane A. Townsend, M.D.  
Secretary

0711#075

## RULE

### Department of Health and Hospitals Office for Citizens with Developmental Disabilities

#### Home and Community-Based Services Waivers Residential Options Waiver (LAC 50:XXI.Chapters 161-169)

The Department of Health and Hospitals, Office for Citizens with Developmental Disabilities has amended LAC 50:XXI Chapters 161-169 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R. S. 49:950, et seq.

#### Title 50

### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part XXI. Home and Community Based Services Waivers

#### Subpart 13. Residential Options Waiver

#### Chapter 161. General Provisions

#### §16101. Introduction

A. The residential options waiver (ROW), a 1915-C waiver, is designed to enhance the long term services and supports available to individuals with developmental disabilities. These individuals would otherwise require an intermediate care facility for the mentally retarded (ICF/MR) level of care.

B. The goal of the residential options waiver is to promote independence through strengthening the individual's capacity for self-care, self-sufficiency and community integration utilizing a wide array of services, supports and residential options which best meets the individual's needs and preferences.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2441 (November 2007).

#### §16103. Program Description

A. The ROW is designed to utilize the principles of self determination and to supplement the family and/or community supports that are available to maintain the individual in the community. In keeping with the principles of self-determination, ROW includes a self-direction option. This allows for greater flexibility in hiring, training and general service delivery issues.

B. The objectives of the ROW are to:

1. promote independence for recipients through the provision of services meeting the highest standards of quality and national best practices while ensuring health and safety through a comprehensive system of recipient safeguards;

2. offer an alternative to institutional care through the provision of an array of services and supports that promote community living, community inclusion and independence by enhancing, and not replacing, existing informal networks;

3. support recipients and their families in exercising their rights and sharing responsibility for their programs regardless of the method of service delivery; and

4. offer access to services on a short-term basis that would protect the health and safety of the recipient if the

family or other care giver were unable to continue to provide care and supervision.

C. All of the services provided in the ROW are accessed through a single point of entry within the Office for Citizens with Developmental Disabilities (OCDD).

D. All services must be prior authorized. Prior authorization is completed through an independent entity contracted by the Department of Health and Hospitals.

E. All services must be delivered in accordance with the approved individual support plan (ISP). The ISP shall be developed using a person-centered process coordinated by the support coordination agency.

1. Waiver recipients choose their support coordination and direct service provider agencies through a freedom of choice process.

F. The total expenditures available for each waiver recipient is established through an assessment of individual support needs and will not exceed the approved ICF/MR rate established for that individual.

G. No reimbursement for ROW services shall be made for a recipient who is admitted to an inpatient setting.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2441 (November 2007).

#### §16105. Recipient Qualifications

A. In order to qualify for services through the ROW, an individual must meet the definition for a developmental disability as defined in R.S. 28:451.2(12)(a)(b).

B. The individual must:

1. be a Louisiana resident and a citizen of the United States or a qualified alien;

2. meet the requirements for an ICF/MR level of care which requires active treatment for developmental disabilities under the supervision of a qualified mental retardation professional;

3. meet the financial eligibility requirements for the Medicaid Program as a member of the group of individuals who would be eligible for Medicaid if they:

a. were in a medical institution; or

b. need home and community-based services in order to remain in the community; and

c. have a special income level equal to 300 percent of the Supplemental Security Income (SSI) federal benefit rate; and

C. Assurances are required that the health, safety and welfare of the individual can be maintained in the community with the provision of ROW services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2441 (November 2007).

#### §16107. Programmatic Allocation of Waiver Opportunities

A. The Request for Services Registry, hereafter referred to as "the registry," shall be used to evaluate individuals for the residential options waiver and to fill all waiver opportunities for persons with developmental disabilities. The next individual on the registry shall be notified in writing that a waiver opportunity is available and that he is next in line to be evaluated for a possible waiver assignment.

The individual shall then choose a support coordination agency that will assist in the gathering of the documents needed for both the financial eligibility and medical certification process for the level of care determination. If the individual is determined to be ineligible, either financially or medically, that individual shall be notified in writing. The next individual on the registry shall be notified, as stated above, and the process continues until an eligible individual is assigned the waiver opportunity. A waiver opportunity shall be assigned to an individual when eligibility is established and the individual is certified.

B. Right of Refusal. An individual may be designated inactive on the registry upon written request to OCDD. When the individual determines that he is ready to begin the waiver evaluation process, he shall request, in writing, that his name be removed from inactive status. His original protected request date will be reinstated.

C. Utilizing the procedures described in Subparagraph A, ROW opportunities will be offered with priority given to the individuals in the following groups:

1. participants in the Money Follows the Person Rebalancing Demonstration Grant of 2007 which includes:

a. residents of nursing facilities who have developmental disabilities and whose care is reimbursed at the rates established for infectious disease or technology dependent care;

b. residents of private ICFs/MR who choose to receive home and community-based waiver services and the providers voluntarily closes the licensed, Medicaid enrolled ICF/MR beds vacated by the individuals in order to fund ROW opportunities; and

c. residents of public ICFs/MR who are in licensed Medicaid enrolled beds and have chosen to receive home and community-based waiver services;

2. residents of six bed private ICFs/MR who choose to receive home and community-based waiver services and the providers voluntarily closes the licensed, Medicaid enrolled ICF/MR beds vacated by the individuals in order to fund ROW opportunities;

3. individuals served in the host home contracts as identified by OCDD or persons served in existing OCDD host home contracts as of the effective date of the ROW; and

4. the remaining opportunities will be allocated equally among the following groups, with any unused opportunities from these groups being equally distributed among the remaining groups:

a. twenty-five percent will be reserved for crisis diversion for those qualifying individuals who meet the criteria for emergency waiver opportunities;

b. 25 percent will be reserved for individuals with developmental disabilities who reside in nursing facilities and do not meet the criteria in Subparagraph C.1.a.;

c. 25 percent will be reserved for residents of private ICFs/MR, based on their registry protected date and on a first-come, first-served basis; and

d. twenty-five percent reserved capacity for qualifying individuals who request the ROW, based on their registry protected date and on a first-come, first-served basis.

D. Crisis diversion or emergency waiver opportunities. requests for crisis diversion or emergency waiver opportunities shall be made through the regional

administrative units (RAU) which are local and regional governmental entities responsible for coordination of services for individuals with developmental disabilities. To be considered for a crisis diversion or emergency waiver opportunity, the individual must need long-term supports, not temporary or short-term supports. All of the following criteria shall be used in the determination of priority for a crisis diversion or emergency waiver opportunity.

1. Urgency of Need. The individual will require further assessment for emergency services if one of the following situations exists:

a. the caregiver is unable or unwilling to continue providing care;

b. death of the caregiver and there are no other available supports;

c. the caregiver is incapacitated and there are no other available supports due to physical or psychological reasons;

d. intolerable temporary placement and immediate need for new placement; or

e. other family crisis exists with no caregiver support available.

2. Level of Risk. The individual will be assessed to determine the risk to his health and safety in areas of daily living, health care and behavioral supports if an emergency waiver opportunity is not made available. Level of risk will be categorized as follows:

a. High Risk. The individual's health or safety is at imminent risk without the requested developmental disability supports.

b. Moderate Risk. The individual has a potential risk of losing his current level of health or safety without the requested developmental disability supports.

c. Low Risk. The individual is at little or no risk of losing his current level of health or safety without the requested developmental disability supports.

3. Level of Unmet Needs. The individual's needs shall be identified and assessed to determine the level to which the needs are being met.

4. Adaptive Service Level Determination. The individual's service needs will be determined utilizing a standardized rating based on adaptive behavior levels.

5. Financial Resources Determination. Individual or family income shall be considered to determine whether it is adequate to meet unmet needs.

E. Individuals who enter the ROW and are on the RFSR for the NOW will retain their protected date for the NOW until July 1, 2008.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2441 (November 2007).

#### **§16109. Discharge Criteria**

A. Discharge Criteria. Recipients shall be discharged from the residential options waiver if one of the following criteria is met:

1. loss of Medicaid financial eligibility;
2. loss of eligibility for an ICF/MR level of care;
3. incarceration or placement under the jurisdiction of penal authorities, courts or state juvenile authorities;
4. change of residence to another state;

5. admission to an ICF/MR or nursing facility with the intent to stay and not to return to waiver services;

6. the health and welfare of the waiver recipient cannot be assured in the community through the provision of reasonable amounts of waiver services, i.e., the waiver recipient presents a danger to himself or others;

7. failure to cooperate in either the eligibility determination process or the initial or annual implementation of the approved ISP or the responsibilities of the ROW recipient; or

8. continuity of services is interrupted as a result of the recipient not receiving ROW services during a period of 30 consecutive days.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2442 (November 2007).

## **Chapter 163. Covered Services**

### **§16301. Assistive Technology**

A. Assistive technology services enable individuals to increase, maintain or improve their ability to function more independently in their home or communities through the use of devices, controls and appliances specified in their ISP. This service also includes service(s) that directly assists recipients in the selection, acquisition, or use of an assistive technology device.

B. Assistive technology services provided through the ROW includes the following services:

1. evaluation of the assistive technology needs of a recipient, including a functional evaluation of the impact of appropriate assistive technology services to the recipient in their customary environment;

2. purchase or lease of assistive technology devices for recipients, including adaptation, maintenance and replacement as necessary. This includes battery purchases and other reoccurring replacement items that contribute to ongoing maintenance of these devices;

3. coordination and use of necessary therapies, interventions or services with assistive technology devices associated with other services in the ISP;

4. training or technical assistance for the recipient, or where appropriate, the recipient's family members, legal guardian or responsible representative in the use and maintenance of devices, controls and appliances;

5. training or technical assistance for professionals or other individuals who provide services to, employ, or who are substantially involved in the major life functions of the recipient;

6. service contracts and other warranties; and

7. repair of all items purchased.

a. Separate payment will be made for repairs after expiration of the warranty when cost effective.

C. Assistive technology equipment covered through ROW may include the following devices:

1. assistive devices for individuals who are deaf or hearing impaired including:

a. visual alarms;

b. telecommunications devices for the deaf (TDDs);

c. telephone amplifying devices; and

d. other devices for the protection of health and safety;

2. assistive devices for individuals who are blind or visually impaired including:

a. tape recorders;

b. talking calculators;

c. magnifiers;

d. Braille writers;

e. talking computerized devices; and

f. other devices for the protection of health and safety;

3. environmental controls including devices to operate appliances, use telephones or open doors;

4. assistive devices for individuals with fine motor limitations including:

a. living and recreational home aides such as reachers, adaptive cooking devices and adapted games.

b. employment or school aides such as book holders, adapted writing devices, page turners and fine motor devices;

5. assistive devices for individuals with sensory processing disorder including multi-sensory devices such as bubble tubes, vestibular swings and tactile boards;

6. control interfaces to assist the person in controlling assistive technology such as keyboards and head and mouth sticks; and

7. other devices, controls, appliances specified in the recipient's ISP which are used to increase, maintain or improve his ability to function more independently in his home or community.

D. All assistive technology items must meet applicable manufacture, design and installation requirements.

E. Service Exclusions. Assistive technology devices that are of general utility or maintenance and have no direct medical or remedial benefit to the individual are excluded from coverage in the ROW.

F. Provider Qualifications. In order to enroll to participate in the Medicaid Program, assistive technology providers must furnish written documentation of authorization to sell, install and/or repair technological equipment and supplies from the respective manufacturer of the designated equipment and supplies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2443 (November 2007).

### **§16303. Community Living Supports**

A. Community living supports (CLS) are services provided to assist individuals with residing successfully in an individual or family home and to help them achieve and maintain the outcomes of increased independence, productivity and inclusion in the community. Utilizing teaching and support strategies, CLS focuses on achieving one or more of the goals outlined in the recipient's approved ISP. These services may be furnished through self-direction or through a licensed, enrolled agency.

B. Community living supports are related to acquiring, retaining and improving independence, autonomy and adaptive skills. CLS may include the following services:

1. direct support services or self-help skills training for the performance of all the activities of daily living and self-care;

2. socialization skills training which is intended to foster community inclusion and well-being, such as involvement in community recreational and leisure activities;

a. CLS providers may provide out-of-home support, community-integration planning (event/location identification and scheduling), transportation, travel training not related to vocational or habilitative services, or other supports needed for socialization skills development.

3. cognitive, communication tasks, adaptive skills which may include homemaker tasks, safety skills, recognition of basic concepts, academic skills (outside of those skills mandated by the local education agency) and a variety of interpersonal communication objectives; and

a. CLS providers may work collaboratively with natural supports, the support coordinator, habilitation and vocational providers or professional services providers to identify areas that connect with the individual's choice of daily routine.

4. replacement behavior components which include those skills required to effectively address situations and antecedents of frequently occurring maladaptive or challenging behavior;

a. CLS providers may work, as directed by an assigned professional, to assist the person to develop skills necessary to reduce or eliminate episodes in which the individual becomes a danger to self or others.

b. The provider of this service shall provide 24-hour back-up and emergency staff to meet unpredictable needs of recipients in a way that promotes maximum dignity and independence while enhancing supervision, safety and security.

C. Place of Service. CLS services are furnished to adults and children who live in a home that is leased or owned by the recipient or his family. Services may be provided in the home or community, with the place of residence as the primary setting.

D. Community living supports may be shared by up to three recipients who may or may not live together, and who have a common direct service provider. Recipients may share CLS staff when agreed to by the recipients, or their legal guardian, and when the health and welfare of each recipient can be assured.

1. The shared staff must be reflected on the recipients' individual support plans and based on an individual-by-individual determination.

2. A shared rate must be billed when CLS staff is shared.

#### E. Service Exclusions

1. Staff providing services may not sleep during billable hours of community living supports.

2. Routine care and supervision that is normally provided by the recipient's spouse or family, and services provided to a minor by the child's parent or step-parent, are not covered in the ROW.

3. The recipient may not live in the same home as CLS staff.

4. Room and board or maintenance, upkeep and improvement of the individual's or family's residence is not covered in the ROW.

5. Community living supports shall not be provided in a licensed respite care facility. Providers cannot bill for CLS

provided at the same time, on the same day, as respite services are provided.

6. Community living supports services are not available to individuals receiving the following services:

a. shared living conversion;

b. shared living;

c. host home; or

d. companion care.

7. Community living supports cannot be provided at the same time that the recipient is receiving the following services:

a. day habilitation;

b. prevocational; or

c. supported employment.

F. Provider Qualifications. CLS providers must possess a current, valid license as a personal care attendant agency.

1. Family members who provide CLS services must meet the same standards as providers who are unrelated to the recipient.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2443 (November 2007).

### §16305. Companion Care

A. Companion care services assist the recipient to achieve and/or maintain the outcomes of increased independence, productivity and inclusion in the community. These services are designed for individuals who live independently and can manage their own household with limited supports. The companion is a principal care provider who provides services in the recipient's home and lives with the recipient as a roommate. Companion care services may be furnished through self-direction or through a licensed provider organization as outlined in the recipient's ISP. This service includes:

1. providing assistance with all of the activities of daily living as indicated in the recipient's ISP;

2. community integration and coordination of transportation services, including medical appointments; and

3. providing medical and physical health care that can be delivered by unlicensed persons in accordance with Louisiana's Nurse Practice Act.

B. Companion care services are arranged by provider organizations that are subject to licensure. The companion is an employee of the provider organization and is responsible for providing limited, daily direct services to the recipient.

1. The companion shall be available in accordance with a pre-arranged time schedule and available by telephone for crisis support on short notice.

2. Services may be provided may be provided by a family member who is not the recipient's spouse, legally responsible relative or legal guardian.

#### C. Provider Responsibilities

1. The provider organization shall develop a written agreement as part of the recipient's ISP which defines all of the shared responsibilities between the companion and the recipient. The written agreement shall include, but is not limited to:

a. types of support provided by the companion;

b. activities provided by the companion; and

c. a typical weekly schedule.

2. Revisions to this agreement must be facilitated by the provider organization and approved by the ISP Team. Revisions may occur at the request of the recipient, the companion, the provider or other ISP Team members.

3. The provider organization is responsible for performing the following functions which are included in the daily rate:

- a. arranging the delivery of services and providing emergency services;
- b. making an initial home visit to the recipient's home, as well as periodic home visits as required by the department;
- c. contacting the companion a minimum of once per week or as specified in the recipient's Individual Support Plan; and
- d. providing 24-hour oversight and supervision of the Companion Care services, including back-up for the scheduled and unscheduled absences of the companion.

4. The provider shall facilitate a signed written agreement between the companion and the recipient which assures that:

a. the companion's portion of expenses must be at least \$200 per month, but shall not exceed 50 percent of the combined monthly costs which includes rent, utilities and primary telephone expenses; and

b. inclusion of any other expenses must be negotiated between the recipient and the companion. These negotiations must be facilitated by the provider and the resulting agreement must be included in the written agreement and in the recipient's ISP.

#### D. Companion Responsibilities

1. The companion is responsible for:

- a. participating in, and abiding by, the ISP;
- b. maintaining records in accordance with State and provider requirements; and
- c. purchasing his own food and personal care items.

#### E. Service Limits

1. Companion Care services may be authorized for up to 360 hours per year as documented in the recipient's ISP.

#### F. Service Exclusions

1. Separate payment will not be made for Community Living Supports since these services are integral to, and inherent in, the provision of Companion Care services.

2. Separate payment will not be made for the following residential service models if the recipient is receiving companion care services:

- a. respite care service—out of home;
- b. shared living;
- c. shared living-conversion; or
- d. host home.

G. Provider Qualifications. The provider agency must be licensed as a personal care attendant agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2444 (November 2007).

### §16307. Day Habilitation Services

A. Day habilitation services are aimed at developing activities and/or skills acquisition to support or further community integration opportunities outside of an individual's home. These activities shall promote independence, autonomy and assist the recipient with

developing a full life in his community. The primary focus of day habilitation services is acquisition of new skills or maintenance of existing skills based on individualized preferences and goals.

1. The skill acquisition and maintenance activities should include formal strategies for teaching the individualized skills and include the intended outcome for the individual.

2. Individualized progress for the skill acquisition and maintenance activities should be routinely reviewed and evaluated, with revisions made as necessary to promote continued skill acquisition.

3. As an individual develops new skills, his training should move along a continuum of habilitation services offered toward greater independence and self-reliance.

#### B. Day habilitation services shall:

1. focus on enabling individuals to attain their maximum skills;

2. be coordinated with any physical, occupational or speech therapies listed in the recipient's ISP;

3. serve to reinforce skills or lessons taught in school, therapy or other settings; and

4. be furnished on a regularly scheduled basis for one or more days per week;

a. services may be furnished either half-day (over two and up to four hours per day) or full-day (over 4 hours per day) based on time spent on-site by the recipient.

#### C. Service Exclusions

1. The provider is responsible for all transportation related to provision of the service, but is not responsible for transportation to and from the recipient's home.

2. Time spent in traveling to and from the habilitation program site shall not be included in the calculation of the total number of service hours provided per day.

a. Travel training for the purpose of teaching the recipient how to use transportation services may be included in determining the total service numbers hours provided per day, but only for the period of time specified in the recipient's ISP.

3. Billing may be made for only one habilitative or vocational service per day.

4. Day habilitation services cannot be billed for the same time as any of the following services:

- a. community living supports;
- b. professional services, except those direct contacts needed to develop a behavioral management plan; or
- c. respite care services—out of home.

D. Provider Qualifications. Providers must be licensed as an adult day care agency or certified by the Louisiana Rehabilitation Services as a community rehabilitation agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2445 (November 2007).

### §16309. Dental Services

A. Dental services available through the ROW include:

1. comprehensive oral examinations;
2. x-ray films;
3. cleanings;
4. scalings;
5. root canals;

6. crowns;
7. surgical and non-surgical extractions;
8. sedations and anesthesia;
9. topical fluoride treatments; and
10. full or partial dentures.

B. Service Exclusion. Recipients must first access dental services covered under the Medicaid State Plan before utilizing dental services through the Residential Options Waiver.

C. Provider Qualifications. Providers must have a current, valid license to provide dental services from the Louisiana State Board of Examiners for Dentistry for the specific dental services in all specialty areas provided to the recipient.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2445 (November 2007).

### **§16311. Environmental Accessibility Adaptations**

A. Environmental accessibility adaptations are physical adaptations to the recipient's home or vehicle which are necessary to ensure his health, welfare and safety, or which enable him to function with greater independence in the home.

1. All adaptations to the home and vehicle must meet all applicable standards of manufacture, design and installation.

B. Environmental adaptation services to the home and vehicle include the following:

1. training the recipient and appropriate direct care staff in the use and maintenance of devices, controls, appliances and related items;

2. repair of all equipment and/or devices, including battery purchases and other reoccurring replacement items that contribute to the ongoing maintenance of the adaptation(s); and

3. service contracts and other warranties.

C. Home accessibility adaptations may include the performance of assessments to determine the types of modifications that are needed and may include the following services to accommodate the medical equipment and supplies which are necessary to assure the welfare of the recipient:

1. installation of ramps and grab-bars;
2. widening of doorways;
3. modification of bathroom facilities; or
4. installation of specialized electric and plumbing systems.

D. Home accessibility adaptations may be applied to rental or leased property only with the written approval of the landlord and approval by OCDD.

E. When state and local building or housing code standards are applicable, modifications to the home shall meet such standards.

F. Service Exclusions for Home Adaptations

1. Home modification funds are not intended to cover basic construction cost. Waiver funds may only be used to pay the cost of purchasing specific approved adaptations for the home, not for the construction costs of additions to the home.

2. Home modifications shall not be furnished to adapt living arrangements that are owned or leased by providers of waiver services.

3. Home modifications shall not include those modifications which add to the total square footage of the home, except when the additional square footage is necessary to make the required adaptation work.

4. Home modifications shall not include those modifications which are of general utility and are not of direct medical or remedial benefit to the individual, including, but not limited to:

- a. flooring;
- b. roof repair;
- c. central air conditioning;
- d. hot tubs;
- e. swimming pools;
- f. exterior fencing; or
- g. general home repair and maintenance.

G. Vehicle adaptations are modifications to an automobile or van that is the waiver recipient's primary means of transportation in order to accommodate his special needs. These adaptations must be specified in the ISP as necessary to enable the recipient to integrate more fully into the community and to ensure his health, welfare and safety.

1. The scope of vehicle modifications may include the performance of necessary assessments to determine the types of modifications that are necessary and may include the installation of a lift or other adaptations to make the vehicle accessible to the recipient or for the recipient to drive.

2. Maintenance and/or repair of vehicle adaptations are included for coverage under ROW.

H. Service Exclusions for Vehicle Adaptations

1. Payment will not be made to adapt vehicles that are owned or leased by paid caregivers or providers of waiver services, or to purchase or lease a vehicle.

2. Vehicle modifications which are of general utility and are not of direct medical or remedial benefit to the recipient are not covered in the ROW.

3. Regularly scheduled upkeep and maintenance of a vehicle is not covered.

4. Car seats are not considered a vehicle adaptation.

I. Provider Qualifications. In order to participate in the Medicaid Program, providers must meet the following qualifications.

1. Providers of environmental accessibility adaptations for the home must be registered through the Louisiana State Licensing Board for Contractors as a home improvement contractor.

a. In addition, these providers must meet the applicable state and/or local requirements governing their licensure or certification.

b. The individuals performing the actual service (building contractors, plumbers, electricians, carpenters, etc.) must also comply with the applicable state and/or local requirements governing individual licensure or certification.

2. Providers of environmental accessibility adaptations to vehicles must be licensed by the Louisiana Motor Vehicle Commission as a specialty vehicle dealer and accredited by the National Mobility Equipment Dealers Association under the Structural Vehicle Modifier category.

a. Existing providers of environmental accessibility adaptations to vehicles must comply with the licensing and accreditation requirements within 12 months of the effective date of the final Rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2446 (November 2007).

### §16313. Host Home

A. Host home services assist recipients in meeting their basic adaptive living needs and offer direct support where required. Recipients are afforded a welcoming, safe and nurturing family atmosphere in a family home environment. Host home services are available to waiver recipients of any age and take into account compatibility, including individual interests, age, needs for privacy, supervision and support needs. These services are provided in a private home by a contractor of the host home agency who lives in the home, and either rents or owns the residence. The contractor utilizes specific teaching strategies to encourage independence and autonomy when required.

1. Host Home services may be provided by an individual unrelated to the recipient or by a family member, but shall not be provided by a parent, spouse or legally responsible relative or legal guardian.

B. Host Home services:

1. include assistance with the activities of daily living specified in the recipient's ISP;

2. assist recipients to develop their leisure interests and activities in the home setting and their relationships with other members in the household; and

3. provide other supports consistent with the recipient's goals, person-centered plans and identified support needs.

C. Host home services are managed by provider organizations that are subject to licensure by the state. The provider organization is responsible for the following functions which are included in the reimbursement rate:

1. arranging for a host home and overseeing the delivery of services by the contractor and providing emergency services;

2. making an initial inspection of the host home, as well as periodic inspections, as required by licensing regulations; and

3. providing 24-hour oversight and supervision of Host Home services including back-up for the host home contractor for the scheduled and nonscheduled absences of the contractor;

a. The recipient, or his legally authorized representative if he is a minor, may agree for the recipient to temporarily move in with another host home family. In this instance, the host home provider is still responsible for oversight, supervision and back-up of the Host Home service.

D. Host home contractors are responsible for:

1. assisting with the development of the recipient's ISP and must abide by the provisions of the plan;

2. maintaining and providing data to assist in the evaluation of the recipient's personal goals;

3. maintaining adequate records to substantiate service delivery and producing such records upon the department's request;

4. undergoing any specialized training deemed necessary by the provider agency, or required by the department, to provide supports in the host home setting;

5. immediately reporting to their agencies any major issues or concerns related to the recipient's safety and well-being;

6. assisting the recipient to access community services, activities and in pursuing and developing recreational and social interests outside the home;

7. facilitating the recipient in becoming a part of his community and assisting with the teaching of community living skills as outlined in the ISP to achieve the recipient's goals concerning his community and social life, as well as to maintain contacts with his biological family and natural supports as specified in the person-centered plans;

8. furnishing assistance to the recipient, who is either working or interested in working, and to the provider agency and other service entities in order to support the recipient's vocational objectives;

9. assisting recipients in keeping medical and therapy appointments, as well as attending these appointments when their support is beneficial; and

10. providing or arranging for transportation to school, work and medical/therapy appointments.

E. Host home contractors who serve children are required to provide daily supports and supervision on a 24-hour basis to meet on-going support needs and to handle emergencies as any family would do for their minor child as required and based on age, capabilities, health conditions and any special needs.

F. Host home contractors serving adults are required to be available for daily supervision, support needs or emergencies as outlined in the adult recipient's ISP based on medical, health and behavioral needs, age, capabilities and any special needs.

1. Host home contractors that serve adults who have been interdicted must ensure that services are furnished in accordance with the legal requirements of the interdiction.

G. Host home contractors who are engaged in employment outside the home must adjust these duties to allow the flexibility needed to meet their responsibilities to the recipient.

H. Host Home Capacity. Regardless of the funding source, a host home contractor may not provide services for more than two recipients in the home.

I. Service Exclusions

1. Separate payment will not be made for Community Living Supports since these services are integral to, and inherent in, the provision of host home services.

2. Separate payment will not be made for the following residential service models if the recipient is receiving host home services:

a. respite care services-out of home;

b. shared living;

c. shared living-conversion; or

d. companion care.

3. The host home contractor may not be the same individual as the owner or administrator of the designated provider agency.

J. Provider Qualifications. Providers must be licensed as a class "A" child placing agency to serve children or be approved by OCDD to serve adults in the host home setting.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2447 (November 2007).

### **§16315. Intensive Community Supports**

A. Intensive community supports (ICS) are specialized behavioral and psychiatric supports for people in the community who are at imminent risk of institutionalization. ICS include a collaborative, inter-disciplinary approach to develop individualized behavioral and psychiatric strategies that are both person-centered and effective.

1. Intensive community supports are provided through a specialized professional treatment team consisting of a/an:

- a. psychologist;
- b. psychiatrist;
- c. registered nurse;
- d. social worker; and as needed,
- e. an associate or assistant to a psychologist.

2. Each member is involved collaboratively in the development of an inter-disciplinary plan. The most clinically appropriate team member(s) represents the team in providing direct service to the recipient.

3. Critically appropriate team members must spend a minimum of one hour weekly meeting with the recipient and/or care givers at the onset of treatment.

4. Core team members include the:

- a. psychologist;
- b. social worker; and
- c. registered nurse.

NOTE: Psychologists must provide clinical leadership and provide supports consistent with person-centered practices and Louisiana's Guideline for Behavioral Supports.

5. Core team members must review summary data at least weekly. Written behavioral support strategies must be reviewed and updated at least monthly, based on the recipient's response to services.

6. The team also works closely with support coordinators to assure a coordinated team effort when other professionals in the community are providing supports (e.g., a neurologist, primary care physician, or physical therapist).

B. Supports and services available through the ICS include:

1. psychological evaluations;
2. psychosocial assessments;
3. psychiatric evaluations;
4. medical screenings;
5. intensive formalized positive behavioral supports;
6. psychiatric treatments;
7. family and/or agency training;
8. service transition planning;
9. brief counseling therapies;
10. 24-hour on-call telephone supports; and
11. crisis planning.

C. Recipient Qualifications. Documentation is required to demonstrate that all of the following criteria for intensive community supports services have been met. This documentation should especially demonstrate that existing services have not been able to remediate the participant's behavior and that more intensive interventions are necessary. To qualify for ICS, an individual must:

1. have an ongoing pattern of behavior that includes:
  - a. physical harm to self or others;
  - b. behaviors/psychiatric symptoms which have led to institutionalization in the past; or
  - c. psychiatric symptoms with a high probability of institutionalization including, but not limited to:
    - i. self-injurious behavior;
    - ii. physical aggression;
    - iii. illegal or inappropriate sexual acts;
    - iv. reckless endangerment;
    - v. psychiatric conditions leading to the denial of self-preservation; or
    - vi. extremely poor hygiene.
2. be at imminent risk of institutionalization;
3. have a need for 24-hour on-call telephone supports and crisis planning to support health and safety; and
4. have a rating of four or greater in Behavioral Supports on the Louisiana PLUS.

#### **D. Service Exclusions**

1. Intensive community supports do not include onsite crisis intervention services and cannot adequately serve people who:

- a. threaten or attempt suicide or homicide; or
- b. have a pattern of felony violations involving violence or the victimization of others.

2. When the ICS team is officially invoked for intensive or specialized situations, service authorization will not be approved and reimbursement will not be paid for other behavioral consultants/professional service providers who are not members of the ICS Team. The team may bill a team rate under the ICS definition provided their new service plan has been written and their assessment conducted.

3. Individual ICS team members can subsequently bill an individual rate under the professional services definition for their follow-up services related to the ICS team's assessment and service plan, provided this service is clearly linked to their ICS Team responsibilities.

4. Individual ICS team members may also bill an individual rate under the professional services definition for services not linked to their ICS Team responsibilities, provided these services are clearly differentiated as regular, non-ICS professional services.

#### **E. Provider Qualifications**

1. Providers of ICS must have a current, valid license as a family support agency serving individuals with developmental disabilities.

#### **F. Staffing Qualifications**

1. ICS Team members must possess a current, valid license issued by the appropriate governing board of Louisiana for that profession. The specific service delivered must be consistent with the scope of the license held by the professional.

a. Each ICS team member must have a minimum of two years experience providing professional services to people with developmental disabilities or receive supervision by professional staff that has the requisite experience.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2448 (November 2007).

### **§16317. Nursing Services**

A. Nursing services are medically necessary services ordered by a physician and provided by a licensed registered nurse or a licensed practical nurse within the scope of the State's Nurse Practice Act. The services require an individual nursing service plan and must be included in the individual support plan.

1. Nursing services provided in the ROW are an extension of nursing services provided through the Home Health Program under the Medicaid State Plan.

2. A physician's letter of medical necessity, 90-L and 485, an individual nursing service plan, a summary of medical history and the nursing checklist are required for nursing services.

3. The nurse must submit updates of any changes to the individual's needs and/or the physician's orders to the support coordinator every 60 days.

B. Nursing consulting services include assessments and health related training and education for recipients and caregivers.

1. Assessment services are offered on an individual basis only and must be performed by a registered nurse.

2. Consulting services may also address healthcare needs related to prevention and primary care activities.

3. The health related training and education service is the only nursing service which can be provided to more than one recipient simultaneously. In this instance, each recipient is billed for his or her portion of the total service time.

C. Service Requirement. Recipients must first exhaust all available nursing visits provided under the Medicaid State Plan prior to receiving services through the waiver program.

#### **D. Provider Qualifications**

1. In order to participate in the Medicaid Program, the provider agency must possess a current, valid license as a home health agency or be an enrolled Shared Living Services agency with a current, valid license as a Supervised Independent Living agency.

#### **E. Staffing Requirements**

1. Nursing services shall be provided by individuals with either a current, valid license as a registered nurse from the Louisiana State Board of Nursing or a current, valid license as a practical nurse from the Board of Practical Nurse Examiners.

2. The RN or the LPN must possess two years of service delivery experience to persons with developmental disabilities post licensure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2449 (November 2007).

### **§16319. One Time Transitional Services**

A. One time transitional services are one-time, set-up services to assist individuals in making the transition from an ICF/MR to their own home or apartment in the community of their choice.

1. Allowable transitional expenses may include:

a. nonrefundable security deposits that do not include rental payments;

b. set up fees for utilities;

c. essential furnishings to establish basic living arrangements, including:

i. bedroom and living room furniture;

ii. table and chairs;

iii. window blinds

iv. food preparation items and eating utensils; and

v. a telephone; and

vi. moving expenses to occupy a community domicile;

d. health and safety assurances including,:

i. pest eradication;

ii. allergen control; or

iii. one-time cleaning prior to occupancy.

B. The recipient's support coordinator will arrange for transitional services for the individual.

#### **C. Service Limits**

1. Set-up transitional expenses are capped at \$3,000 per person over a recipient's lifetime.

#### **D. Service Exclusions**

1. Payment shall not be made for housing, rent or refundable security deposits.

2. One time transitional services are not available to waiver recipients who are receiving Host Home services.

3. One time transitional services are not available to waiver recipients who are moving into a family member's home.

E. The Office for Citizens with Developmental Disabilities shall be the entity responsible for coordinating the delivery of one time transitional services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2449 (November 2007).

### **§16321. Personal Emergency Response System (PERS)**

A. Personal emergency response system (PERS) is an electronic device which enables individuals to secure help in an emergency. The individual may also wear a portable help button to allow for mobility. The system is connected to the person's telephone and programmed to signal a response center once a help button is activated.

B. Recipient Qualifications. PERS services are available to individuals who:

1. have a demonstrated need for quick emergency back-up;

2. are unable to use other communication systems because they are inadequate to summon emergency assistance; or

3. do not have 24-hour direct supervision.

C. Coverage of the PERS includes the rental of the electronic device, the initial installation, training the recipient to use the equipment, and monthly maintenance fees.

#### **D. Service Exclusions**

1. Separate payment will not be made for Shared Living Services when PERS services are utilized since 24-hour direct supervision is available.

E. Provider Qualifications. The provider must be authorized by the manufacturer to install and maintain equipment for personal emergency response systems. The provider shall be in compliance with all applicable federal, state, and local regulations governing the operation of

personal emergency response systems including staffing requirements for the response center.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2449 (November 2007).

### **§16323. Prevocational Services**

A. Prevocational services are pre-vocational activities designed to assist individuals in acquiring and maintaining basic work-related skills for competitive employment. Because of their disabilities, these individuals need intensive ongoing support to perform in a paid work setting. Services should be offered to engage individuals in real and simulated employment tasks to determine their vocational potential. Overall goals of the program include regular community inclusion and development of work skills and habits to improve the employability of the individual. These services must be reflective of the recipient's ISP and directed toward habilitation rather than teaching a specific job skill.

1. Prevocational Services should focus on teaching concepts and skills such as:

- a. following directions;
- b. attending to task;
- c. task completion;
- d. problem solving; and
- e. job safety skills.

2. The primary focus of Prevocational Services is the acquisition of employment related skills based on the individual's vocational preferences and goals.

a. These activities should include formal strategies for teaching the skills and the intended outcome for the individual.

b. Individualized progress for the activities should be routinely reviewed and evaluated with revisions made as necessary.

B. In the event recipients are compensated in the employment-related training services, the compensation must be in accordance with the United States Fair Labor Standards Act of 1985.

1. If recipients are paid in excess of 50 percent of the minimum wage, the provider must, at a minimum:

- a. conduct 6-month formal reviews to determine the suitability of this service rather than Supported Employment services;
- b. make recommendations to transition the individual to a more appropriate vocational opportunity; and
- c. provide the support coordinator with documentation of both the productivity time studies and documented reviews of current placement feasibility.

#### **C. Service Limits**

1. Services shall be furnished on a regularly scheduled basis for no more than eight hours a day, five days a week.

a. services may be furnished either half-day (over two and up to four hours per day) or full-day (over four hours per day) based on time spent on-site by the recipient.

#### **D. Service Exclusions**

1. Prevocational Services are not available to individuals who are eligible to participate in programs funded under §110 of the Rehabilitation Act of 1973 or §602(16) and (17) of the Individuals with Disabilities Education Act, 20 U.S.C. 1401(16) and (17).

2. Claims may be submitted for only one vocational or habilitative service per day.

3. Prevocational Services cannot be provided or billed for the same time as the following services:

- a. community living supports;
- b. professional services except direct contacts needed to develop a behavioral management plan; or
- c. respite care services—out of home.

4. The provider is responsible for all transportation related to provision of the service, but is not responsible for transportation to and from the recipient's home.

5. Time spent in traveling to and from the prevocational program site shall not be included in the calculation of the total number of service hours provided per day.

a. Travel training for the purpose of teaching the recipient how to use transportation services may be included in determining the total service numbers hours provided per day, but only for the period of time specified in the recipient's ISP.

E. **Provider Qualifications.** Providers must have a current, valid license as an adult day care center or have a compliance certificate from Louisiana Rehabilitation Services as a Community Rehabilitation Program.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2450 (November 2007).

### **§16325. Professional Services**

A. Professional services are direct services to recipients, based on need, that are designed to increase the individual's independence, participation and productivity in the home, work and community. Professional services must be delivered with the recipient present and be provided based on the approved ISP and an individualized service plan. Service intensity, frequency and duration will be determined by individual need. Professional services may be utilized to:

1. provide training or therapy to an individual and/or their natural and formal supports, necessary to either develop critical skills that may be self-managed by the individual or maintained according to the individual's needs;

2. perform assessments and/or re-assessments and provide recommendations;

3. intervene in and stabilize a crisis situation (behavioral or medical) that could result in the loss of home and community-based services, including the development, implementation, monitoring, and modification of behavioral support plans;

4. provide consultative services and recommendations;

5. provide necessary information to the individual, family, caregivers, and/or team to assist in planning and implementing plans per the approved ISP;

6. provide caregiver training that includes instructions in skills and knowledge pertaining to the support and assistance of persons with developmental disabilities and is intended to allow caregivers to become more proficient in meeting the needs of eligible individuals;

a. all caregiver training must be included in the recipient's ISP;

7. provide caregiver counseling for the natural, adoptive, foster, or host family members of individuals with disabilities, to develop and maintain healthy, stable relationships among all caregivers, including family members, to meet the needs of the recipient; and

a. emphasis is placed on the acquisition of coping skills by building upon family strengths. Services are intended to maximize the emotional and social adjustment and well-being of the individual, family, and caregiver.

8. provide nutritional services, including dietary evaluation and consultation with individuals or their care provider.

a. Services are intended to maximize the individual's nutritional health.

B. Professional services covered in the ROW include:

1. occupational therapy;
2. physical therapy;
3. speech therapy;
4. dietary and nutritional services;
5. social work services; and
6. psychological services.

C. Service Exclusions

1. Professional services related to behavioral health services will not be authorized once the intensive community supports team is officially invoked for intensive or specialized situations.

a. Individual ICS team members may subsequently submit a claim under the Professional Services for their follow-up services related to the ICS team's assessment and service plan provided this service is clearly linked to their ICS Team responsibilities.

b. Individual ICS team members may also submit a claim under the Professional Services for services that are not linked to their ICS Team responsibilities provided these services are clearly differentiated as regular, non-ICS professional services.

2. Professional services may only be furnished and reimbursed through ROW when the services are not covered under the Medicaid State Plan as medically necessary, but are of rehabilitative or remedial benefit to the recipient.

3. Recipients who are participating in ROW and are up to the age of 21 must access these services through the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program.

a. Recipients who are over the age of 21 must exhaust the professional services available under the Medicaid State Plan before accessing these services through ROW.

D. Provider Qualifications

1. Individual practitioners who enroll as providers of Professional Services must have a current, valid license from the appropriate governing board of Louisiana for that profession.

a. In addition, the professional must possess two years of service delivery experience with persons with developmental disabilities or receive supervision by professional staff that has the requisite experience.

2. Provider agencies must have Medicare certification as a free-standing rehabilitation center or a current, valid license as a:

- a. home health agency,
- b. personal care attendant agency,

c. supervised independent living agency; or  
d. family support agency serving people with developmental disabilities.

E. Staffing Requirements. Individuals furnishing professional services may either be employed by or have a contract with the enrolled provider agency.

1. Professional services must be provided by individuals with a current, valid license from the appropriate governing board of Louisiana for that profession. The specific service delivered must be consistent with the scope of the license held by the professional.

2. Each professional must also possess two years of service delivery experience with persons with developmental disabilities or receive supervision by professional staff that has the requisite experience.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2450 (November 2007).

### **§16327. Respite Care Services—Out of Home**

A. Respite care services—out of home are supports and services provided for the relief of those unpaid caregivers who normally provide care to recipients who are unable to care for themselves. These services are furnished on a short-term basis in a respite center by a licensed respite provider. Respite Care services are necessary to prevent individuals from being institutionalized.

1. A licensed respite care facility shall insure that community activities are available to the recipient in accordance with his approved ISP, including transportation to and from these activities.

a. The rate for respite care services—out of home includes the transportation costs for the community activities.

2. While receiving respite care services, the recipient's routine is maintained in order to attend school, school activities, work or other community activities he would receive if he was not in the center-based respite facility.

B. Service Limits

1. Respite care services are limited to 720 hours per recipient, per individual support plan year. Requests for an extension of the service limit are subject to the Department's established approval process and require proper justification and documentation.

C. Service Exclusions

1. Room and board shall be covered only if it is provided as part of respite care furnished in a state-approved facility that is not a private residence.

2. Respite care services—out of home may not be billed for recipients receiving the following services:

- a. shared living;
- b. shared living conversion;
- c. companion care; or
- d. host home.

D. Provider Qualifications. The provider must possess a current, valid license as a Respite Care Center.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2451 (November 2007).

### §16329. Shared Living Services

A. Shared living services assist the recipient in acquiring, retaining and improving the self-care, adaptive and leisure skills needed to reside successfully in a shared home setting within the community. Services are chosen by the recipient and developed in accordance with his goals and wishes for his particular shared living setting with regard to compatibility, interests, age and privacy.

1. A shared living services provider delivers supports which include 24-hour staff presence and responsibilities as required in each recipient's ISP.

2. The provider is responsible for the daily schedule to provide the support, supervision, safety and security pertinent to the individual as he engages in a variety of community work and recreational/leisure activities and associations.

3. This service includes assistance with all of the activities of daily living.

B. Shared Living Conversion Option. The shared living conversion option is allowed only in homes which were previously licensed and certified as an ICF/MR for up to a maximum of eight licensed and Medicaid-funded beds on June 30, 2007.

1. The number of individuals residing in this service model shall not exceed the licensed and Medicaid-funded bed capacity of the ICF/MR on June 30, 2007 or up to six individuals, whichever is less.

#### C. Shared Living Option

1. A shared living option is allowed for new or existing providers for up to a maximum of three individuals in a shared home setting. These shared home settings must be either a home owned or leased by the waiver recipients, or a home owned or leased and operated by a licensed shared living provider.

2. A shared living option for up to a maximum of four individuals in a shared home setting is limited to existing licensed and certified public or private ICFs/MR which elect to downsize into this model.

#### D. Service Exclusions

1. Payments are not made for room and board, the cost of home maintenance, upkeep or improvements.

2. Separate payment will not be made for transportation for the purpose of community access as this is a component of shared living services.

3. The following services are not available to recipients utilizing share living and shared living conversion services:

- a. community living supports;
- b. respite care services;
- c. companion care; or
- d. host home.

E. Provider Qualifications. Providers must be enrolled as a Shared Living agency and have a current, valid license as a supervised independent living agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2452 (November 2007).

### §16331. Specialized Medical Equipment and Supplies

A. Specialized medical equipment and supplies includes durable and non-durable equipment that is necessary to address the functional limitations of the recipient as well as items necessary to support life or to address physical conditions, along with the ancillary supplies and equipment needed for proper functioning of such items. Specialized medical equipment and supplies may only be furnished and reimbursed through ROW when the services are not covered under the Medicaid State Plan as medically necessary, but are of habilitative or remedial benefit to the recipient.

1. Coverage includes for the purchase and/or rental of equipment, devices, controls, appliances and supplies specified in the ISP which increases the recipient's ability to:

- a. perform activities of daily living;
- b. perceive, control or communicate with his environment; or
- c. maintain health and safety.

B. Items provided through this waiver are in addition to any medical equipment and supplies covered under the Medicaid State Plan. All items must meet applicable standards of manufacture, design and installation.

#### C. Services include the following:

1. training the recipient and caregivers in the use and maintenance of equipment, devices, controls, appliances, supplies and related items;

2. repair and upkeep of all equipment, including battery purchases and other reoccurring replacement items that contribute to ongoing maintenance of the equipment; and

3. service contracts and other warranties.

D. Equipment includes the following items that are not covered under the Medicaid State Plan, Medicare and/or other funding sources:

1. specialized mobility devices (excluding wheelchairs);
2. specialized positioning devices or equipment;
3. therapeutic shoe inserts;
4. specialized medical equipment such as electronic lifts;
5. adaptive devices and equipment prescribed by a therapist for exercise;
7. alternative and augmentative communication boards, electronic communication devices and interfaces to operate prescribed devices.

#### E. Service Exclusions

1. Any equipment, device, appliance or supply that is covered under the Medicaid State Plan, Medicare or any other third party insurance is excluded from coverage in the ROW.

2. Specialized equipment and supplies that are of general utility or maintenance and are not of direct medical or remedial benefit to the individual are excluded from coverage in the ROW.

F. Provider Requirements. In order to enroll to participate in the Medicaid Program, vendors of specialized medical equipment and supplies must furnish written documentation of authorization to sell, install and/or repair specialized equipment and supplies from the respective manufacturer of the designated equipment and supplies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2452 (November 2007).

### **§16333. Support Coordination**

A. Support coordination services are provided to all ROW recipients to assist them in gaining access to all of their needed services regardless of the funding source for the services. Support coordination will provide information and assistance to waiver recipients in directing and managing their services in compliance with the rules and regulations governing case management services.

1. Support coordinators shall be responsible for ongoing monitoring of the provision of services included in the recipient's approved ISP.

2. Support coordinators shall also participate in the evaluation and re-evaluation of the recipient's ISP.

B. Support coordinators are responsible for providing assistance to recipients who choose the self-direction option with their review of the Self-Direction Employer Handbook and for being available to these recipients for on-going support and help with carrying out their employer responsibilities.

C. Provider Qualifications. Providers must have a current, valid license as a case management agency and meet all other requirements as set forth in LAC 50:XV.Chapter 105.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2453 (November 2007).

### **§16335. Supported Employment**

A. Supported employment is competitive work in an integrated work setting, or employment in an integrated work setting, in which the individuals are working toward competitive work.

1. The support services provided are consistent with the individual's:

- a. strengths;
- b. resources;
- c. priorities;
- d. concerns;
- e. abilities;
- f. capabilities;
- g. interests; and
- h. informed choices.

2. Ongoing support services are provided to individuals for whom competitive employment has not traditionally occurred.

3. Services are provided to individuals who are not served by Louisiana Rehabilitation Services and need more intense, long-term follow along, and usually cannot be competitively employed because supports cannot be successfully faded.

B. Supported Employment services include:

1. individual placement which is a supported employment placement strategy in which an employment specialist (job coach) places a person into competitive employment, provides training and support and then gradually reduces time and assistance at the worksite;

2. services that assist a recipient to develop and operate a micro-enterprise;

a. This service consists of:

i. assisting the recipient to identify potential business opportunities;

ii. assistance in the development of a business plan, including potential sources of business financing and other assistance in developing and launching a business;

iii. identification of the supports that are necessary in order for the recipient to operate the business; and

iv. ongoing assistance, counseling and guidance once the business has been launched.

3. enclave services which is an employment situation in competitive employment in which a group of eight or fewer workers with disabilities are working at a particular work setting. The disabled workers may be disbursed throughout the company and among non-disabled workers or congregated as a group in one part of the business; and

4. mobile work crews which is a group of eight or fewer workers with disabilities who perform work in a variety of locations under the supervision of a permanent employment specialist (job coach/supervisor).

C. Service Limits

1. The required minimum number of service hours per day for supported employment is as follows for:

a. individual placement services, the minimum is one hour;

b. services that assist a recipient to develop and operate a micro-enterprise, the minimum is one hour;

c. an enclave, the minimum is five hours; and

d. a mobile work crew, the minimum is five hours.

D. Service Exclusions

1. Payment will only be made for the adaptations, supervision and training required by individuals receiving waiver services, and will not include payment for the supervisory activities rendered as a normal part of the business setting.

2. Billing may be made for only one vocation or habitative service per day.

3. Supported employment services cannot be billed for the same time as any of the following services:

a. community living supports;

b. professional services except direct contacts needed to develop a behavioral management plan; or

c. respite care services—out of home.

4. The provider is responsible for all transportation related to provision of the service, but is not responsible for transportation to and from the recipient's home.

5. Time spent in traveling to and from the prevocational program site shall not be included in the calculation of the total number of service hours provided per day.

a. Travel training for the purpose of teaching the recipient how to use transportation services may be included in determining the total service numbers hours provided per day, but only for the period of time specified in the recipient's ISP.

6. The following incentive payments, subsidies or unrelated vocational training expenses are excluded from coverage in supported employment services:

- a. incentive payments made to an employer to encourage or subsidize the employer's participation in a supported employment program;
- b. payments that are passed through to users of supported employment programs; or
- c. payments for vocational training that is not directly related to an individual's supported employment program.

7. Services are not available to individuals who are eligible to participate in programs funded under §110 of the Rehabilitation Act of 1973 or §602(16) and (17) of the Individuals with Disabilities Education Act, 20 U.S.C. 1401(16) and (17).

E. Provider Qualifications. Providers must have a compliance certificate from Louisiana Rehabilitation Services as a community rehabilitation program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2453 (November 2007).

### §16337. Transportation Services

A. Transportation services enable waiver recipients to gain access to waiver and other community services, activities and resources. These services are necessary to increase independence, productivity, and community inclusion as outlined in the recipient's ISP. Transportation services under the waiver shall be offered in accordance with the recipient's ISP and must be documented in the ISP.

- 1. The recipient must be present to receive this service.
- 2. Whenever possible, the recipient must utilize the following resources for transportation:
  - a. family, neighbors, friends or community agencies which can provide this service without charge; or
  - b. public transportation or the most cost-effective method of transport available.

B. Transportation for community access and for habilitative and vocational services represents two separate and distinct services.

1. Transportation-community access is intended to assist the recipient to access community activities, resources and services to increase integration with persons who do not have developmental disabilities.

2. Transportation-habilitative and vocational is intended to assist the recipient to access day habilitation, pre-vocational and supported employment services.

a. These services are meant to provide maximum flexibility to the recipient to choose the mode of transportation that he wishes to use to reach a habilitative or vocational site. Therefore, transportation for this purpose is available and billable only if the individual receives a vocational or habilitative service on the day that this service is provided.

#### C. Service Limits

1. All community access trips shall be identified in the recipient's ISP. These trips are limited to three per day and must be arranged for geographic efficiency. Greater than three trips per day require approval from the Department of Health and Hospitals or its designee.

2. This service is limited to a maximum of two one-way trips per service day for a maximum of 264 days, 528 service units per year.

#### D. Service Exclusions

1. Transportation services offered through ROW shall not replace the medical transportation services covered under the Medicaid State Plan or transportation services provided as a means to get to and from school.

2. Separate payment will not be made for transportation-community access and the following services:

- a. shared living services; or
- b. respite care services—out of home.

E. Provider Qualifications. In order to participate in the Medicaid Program, transportation providers must comply with the following requirements. Providers of other waiver services (day habilitation, supported employment, shared living, etc.) may also separately enroll as transportation providers and must comply with the same requirements.

1. Transportation providers must comply with all state laws and local ordinances governing vehicle licensing, registration, inspection and operation.

2. For profit providers shall have a minimum liability insurance coverage of \$100,000 per person and \$300,000 per accident or a \$300,000 combined service limits policy.

a. The liability policy shall cover all automobiles owned or leased by the provider utilized for furnishing transportation services.

b. Premiums shall be prepaid for a period of six months. Verification of prepaid insurance must be a true and correct copy of the policy issued by home office of the insurance company. The verification must include the dates of coverage and a 30 day cancellation notification clause.

i. Statements from the agent writing the policy will not be acceptable.

c. Verification of renewal of the insurance policy must be submitted to the Bureau of Health Services Financing (BHSF) no later than 48 hours prior to the end date of coverage.

i. The policy must provide that the 30 day cancellation notification be issued to BHSF. Upon receipt of the cancellation or expiration of coverage notice, the provider agreement for participation will be immediately cancelled. The ending date of participation shall be the ending date of insurance coverage.

ii. Retroactive coverage statements will not be accepted.

d. Providers who lose the right to participate in the Medicaid Program due to lack of prepaid insurance may re-enroll and will be subject to all applicable enrollment procedures, policies, and fees for new providers.

3. In order to receive reimbursement for transporting Medicaid recipients to waiver services, family and friends must maintain the state minimum automobile liability insurance coverage, a current state inspection sticker, and a current valid driver's license.

a. No special inspection by the Medicaid agency will be conducted.

b. Documentation of compliance with the three listed requirements for this class of provider must be submitted when enrollment in the Medicaid agency is sought. Acceptable documentation shall be the sworn and notarized statement of the individual enrolling for payment that all three requirements are met.

c. Family and friends transportation providers are limited to transporting up to three specific waiver recipients.

F. Staffing Requirements. All drivers employed by for profit and non-profit transportation services providers must have a current, valid class D (chauffeur) license.

G. Vehicle Requirements. All vehicles utilized by for profit and non-profit transportation services providers for transporting waiver recipients must comply with all applicable state laws and regulations and are subject to inspection by the Department of Health and Hospitals or its designee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2454 (November 2007).

## **Chapter 165. Self-Direction Initiative**

### **§16501. Self-Direction Service Option**

A. The self-direction initiative is a voluntary, self-determination option which allows the waiver recipient to coordinate the delivery of designated ROW services through an individual direct support professional rather than through a licensed, enrolled provider agency. Selection of this option requires that the recipient utilize a payment mechanism approved by the Department to manage the required fiscal functions that are usually handled by a provider agency.

B. Recipient Responsibilities. Waiver recipients choosing the self-direction service option must understand the rights, risks and responsibilities of managing their own care and individual budget. If the recipient is unable to make decisions independently, he must have an authorized representative who understands the rights, risks and responsibilities of managing his care and supports within his individual budget. Responsibilities of the recipient or authorized representative include:

1. completion of mandatory trainings, including the rights and responsibilities of managing his own services and supports and individual budget;

2. participation in the self-direction service option without a lapse in, or decline in quality of care or an increased risk to health and welfare; and

a. recipients must adhere to the health and welfare safeguards identified by the team, including:

i. the application of a comprehensive monitoring strategy and risk assessment and management systems; and

ii. compliance with the requirement that employees under this option must have criminal background checks prior to working with waiver recipients;

3. participation in the development and management of the approved personal purchasing plan.

a. This annual budget is determined by the recommended service hours listed in the recipient's ISP to meet his needs.

b. The recipient's individual budget includes a potential amount of dollars within which the recipient, or his authorized representative, exercises decision-making responsibility concerning the selection of services and service providers.

C. Termination of Self-Direction Service Option. Termination of participation in the self-direction service option requires a revision of the ISP, the elimination of the fiscal agent and the selection of the Medicaid-enrolled waiver service provider(s) of choice.

1. Voluntary Termination. The waiver recipient may choose at any time to withdraw from the self-direction

service option and return to the traditional provider agency management of services.

2. Involuntary Termination. The department may terminate the self-direction service option for a recipient and require him to receive provider-managed services under the following circumstances:

a. the health or welfare of the recipient is compromised by continued participation in the self-direction service option;

b. the recipient is no longer able to direct his own care and there is no responsible representative to direct the care;

c. there is misuse of public funds by the recipient or the authorized representative; or

d. over three payment cycles in the period of a year, the recipient or authorized representative:

i. places barriers to the payment of the salaries and related state and federal payroll taxes of direct support staff,

ii. fails to follow the Personal Purchasing Plan and the ISP;

iii. fails to provide required documentation of expenditures and related items; or

iv. fails to cooperate with the fiscal agent or support coordinator in preparing any additional documentation of expenditures.

D. Employees of recipients in the self-direction service option are not employees of the fiscal agent or the Department of Health and Hospitals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2455 (November 2007).

## **Chapter 167. Provider Participation**

### **§16701. General Provisions**

A. In order to participate in the Medicaid Program as a provider of services in the residential options waiver, a provider must:

1. meet all of the requirements for licensure and the standards for participation in the Medicaid Program as a home and community-based services provider in accordance with state laws and the rules promulgated by the department; and

2. comply with the regulations and requirements specified in LAC 50:XXI, Subparts 1 and 13 and the ROW provider manual.

B. Providers must maintain adequate documentation to support service delivery and compliance with the approved ISP and provide said documentation upon the department's request.

C. In order for a provider to bill for services, the waiver recipient and the direct service worker or professional services practitioner rendering service must be present at the time the service is rendered.

1. Exception. The following services may be provided when the recipient is not present:

a. environmental accessibility adaptations;

b. personal emergency response systems; and

c. one-time transitional services.

2. All services must be documented in service notes which describe the services rendered and progress towards the recipient's personal outcomes and his ISP.

D. If transportation is provided as part of a waiver service, the provider must comply with the requirements for transportation services providers set forth in §16337.G-I.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2455 (November 2007).

## **Chapter 169. Reimbursement**

### **§16901. Reimbursement Methodology**

A. Reimbursement for the following services shall be a prospective flat rate for each approved unit of service provided to the waiver recipient. One quarter hour (15 minutes) is the standard unit of service, which covers both the service provision and administrative costs for these services:

1. respite care;
2. community living supports (cls):
  - a. up to three recipients may share CLS services if they share a common provider of this service;
  - b. there is a separate reimbursement rate for CLS when these services are shared;
3. professional services furnished by a/an:
  - a. psychologist;
  - b. speech therapist;
  - c. physical therapist;
  - d. occupational therapist;
  - e. social worker; or
  - f. dietician/nutritionist;
4. nursing services;
5. intensive community supports; and
6. supported employment.

B. The following services are reimbursed at the cost of adaptation device, equipment or supply item:

1. environmental accessibility adaptations;
  - a. upon completion of the environmental accessibility adaptations and prior to submission of a claim for reimbursement, the provider shall give the recipient a certificate of warranty for all labor and installation work and supply the recipient with all manufacturers' warranty certificates.
2. assistive technology; and
3. specialized medical equipment and supplies.

C. The following services are reimbursed at a per diem rate:

1. host home;
2. companion care living services;
3. shared living services;
  - a. per diem rates are established based on the number of individuals sharing the living service module for both for shared living and shared living conversion services.

D. The following services are reimbursed at a per diem rate which may be billed either half-day (over two and up to four hours per day) or full-day (over four hours per day) based on time spent on-site by the recipient:

1. day habilitation; and
2. pre-vocational.

E. The reimbursement for transportation services is a flat fee based on a capitated rate.

F. Support coordination services shall be reimbursed at a fixed monthly rate in accordance with the terms of the established contract.

G. Installation of a personal emergency response system (PERS) is reimbursed at a one-time fixed rate and maintenance of the PERS is reimbursed at a monthly rate.

H. Transition expenses from an ICF/MR or nursing facility to a community living setting are reimbursed at the cost of the service(s) up to a one-time maximum rate.

I. Dental services are reimbursed at the Medicaid fee-for-service rate.

J. Reimbursement Exclusion. No payment will be made for room and board under this waiver program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2456 (November 2007).

### **§16903. Direct Support Staff Wages**

A. In order to maximize staffing stability and minimize turnover among direct support staff, providers of the following services furnished under the residential options waiver are required to pay direct support workers an hourly wage that is at least 29 percent (\$1.50) more than the federal minimum wage in effect as of July 23, 2007 or the current federal minimum wage, whichever is higher.

1. community living supports;
2. respite services-out of home;
3. shared living conversion option;
4. shared living option;
5. day habilitation;
6. prevocational services; and
7. supported employment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2456 (November 2007).

Implementation of the provisions of this Rule shall be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

Roxane A. Townsend, M.D.  
Secretary

0711#077

## **RULE**

### **Department of Insurance Office of the Commissioner**

#### **Military Sales Practices (LAC 37:XIII.Chapter 125)**

Under the authority of the Louisiana Insurance Code, R.S. 22:1 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Commissioner of Insurance for the Louisiana Department of Insurance hereby adopts Regulation 92, which is in part predicated on Public Law 109-290, the "Military Personnel Financial Services Protection Act." The purpose of Regulation 92 is to set forth standards to protect active duty service members of the United States Armed Forces from dishonest and predatory insurance sales practices by declaring certain practices identified by the U.S. Congress and the National Association of Insurance Commissioners to be false, misleading, deceptive or unfair.

**Title 37**  
**INSURANCE**

**Part XIII. Regulations**

**Chapter 125. Regulation 92—Military Sales Practices**

**§12501. Purpose**

A. The purpose of this regulation is to set forth standards to protect active duty service members of the United States Armed Forces from dishonest and predatory insurance sales practices by declaring certain identified practices to be false, misleading, deceptive or unfair.

B. Nothing herein shall be construed to create or imply a private cause of action for a violation of this regulation.

AUTHORITY NOTE: Promulgated in accordance with R.S.22:3, 22:1211, 22:1214, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:2457 (November 2007).

**§12503. Scope**

A. This regulation shall apply only to the solicitation or sale of any life insurance or annuity product by an insurer or insurance producer to an active duty service member of the United States Armed Forces.

AUTHORITY NOTE: Promulgated in accordance with R.S.22:3, 22:1211, 22:1214; and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:2457 (November 2007).

**§12505. Authority**

A. This regulation is promulgated by the Commissioner of Insurance pursuant to authority granted under the Louisiana Insurance Code, Title 22, §22:1 et seq., particularly 22:3, and the Unfair Trade Practices Law, see Title 22, §1211, and specifically §1214.(1)(a).

AUTHORITY NOTE: Promulgated in accordance with R.S.22:3, 22:1211, 22:1214; and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:2457 (November 2007).

**§12507. Exemptions**

A. This regulation shall not apply to solicitations or sales involving:

1. credit insurance;
2. group life insurance or group annuities where there is no in-person, face-to-face solicitation of individuals by an insurance producer or where the contract or certificate does not include a side fund;
3. an application to the existing insurer that issued the existing policy or contract when a contractual change or a conversion privilege is being exercised; or, when the existing policy or contract is being replaced by the same insurer pursuant to a program filed with and approved by the commissioner; or, when a term conversion privilege is exercised among corporate affiliates;
4. individual stand-alone health policies, including disability income policies;
5. contracts offered by Servicemembers' Group Life Insurance (SGLI) or Veterans' Group Life Insurance (VGLI), as authorized by 38 U.S.C. Section 1965 et seq.;

6. life insurance contracts offered through or by a non-profit military association, qualifying under Section 501(c) (23) of the Internal Revenue Code (IRC), and which are not underwritten by an insurer; or

7. contracts used to fund:

a. an employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);

b. a plan described by Sections 401(a), 401(k), 403(b), 408(k) or 408(p) of the IRC, as amended, if established or maintained by an employer;

c. a government or church plan defined in Section 414 of the IRC, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under Section 457 of the IRC;

d. a nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

e. settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

f. prearranged funeral contracts.

B. Nothing herein shall be construed to abrogate the ability of nonprofit organizations (and/or other organizations) to educate members of the United States Armed Forces in accordance with Department of Defense DOD Instruction 1344.07 Personal Commercial Solicitation on DOD Installations or successor directive.

C. For purposes of this regulation, general advertisements, direct mail and internet marketing shall not constitute "solicitation." Telephone marketing shall not constitute "solicitation" provided the caller explicitly and conspicuously discloses that the product concerned is life insurance and makes no statements that avoid a clear and unequivocal statement that life insurance is the subject matter of the solicitation. Provided however, nothing in this Subsection shall be construed to exempt an insurer or insurance producer from this regulation in any in-person, face-to-face meeting established as a result of the "solicitation" exemptions identified in this Subsection.

AUTHORITY NOTE: Promulgated in accordance with R.S.22:3, 22:1211, 22:1214; and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:2457 (November 2007).

**§12509. Definitions**

A. For the purposes of this regulation the following terms shall have the meaning ascribed herein, unless the context clearly indicates otherwise.

*Active Duty*—full-time duty in the active military service of the United States and includes members of the reserve component (National Guard and Reserve) while serving under published orders for active duty or full-time training. The term does not include members of the reserve component who are performing active duty or active duty for training under military calls or orders specifying periods of less than 31 calendar days.

*Department of Defense (DOD) Personnel*—all active duty service members and all civilian employees, including nonappropriated fund employees and special government employees, of the Department of Defense.

*Door to Door*—a solicitation or sales method whereby an insurance producer proceeds randomly or selectively from household to household without prior specific appointment.

*General Advertisement*—an advertisement having as its sole purpose the promotion of the reader's or viewer's interest in the concept of insurance, or the promotion of the insurer or the insurance producer.

*Insurer*—an insurance company required to be licensed under the laws of this state to provide life insurance products, including annuities.

*Insurance Producer*—a person required to be licensed under the laws of this state to sell, solicit or negotiate life insurance, including annuities.

*Known or Knowingly*—depending on its use herein, the insurance producer or insurer had actual awareness, or in the exercise of ordinary care should have known, at the time of the act or practice complained of, that the person solicited:

1. is a service member; or
2. is a service member with a pay grade of E-4 or below.

*Life Insurance*—insurance coverage on human lives including benefits of endowment and annuities, and may include benefits in the event of death or dismemberment by accident and benefits for disability income and unless otherwise specifically excluded, includes individually issued annuities.

*Military Installation*—any federally owned, leased, or operated base, reservation, post, camp, building, or other facility to which service members are assigned for duty, including barracks, transient housing, and family quarters.

*MyPay*—a Defense Finance and Accounting Service (DFAS) web-based system that enables service members to process certain discretionary pay transactions or provide updates to personal information data elements without using paper forms.

*Service Member*—any active duty officer (commissioned and warrant) or enlisted member of the United States Armed Forces.

*Side Fund*—a fund or reserve that is part of or otherwise attached to a life insurance policy (excluding individually issued annuities) by rider, endorsement or other mechanism which accumulates premium or deposits with interest or by other means. The term does not include:

- a. accumulated value or cash value or secondary guarantees provided by a universal life policy;
  - b. cash values provided by a whole life policy which are subject to standard nonforfeiture law for life insurance; or
  - c. a premium deposit fund which:
    - i. contains only premiums paid in advance which accumulate at interest;
    - ii. imposes no penalty for withdrawal;
    - iii. does not permit funding beyond future required premiums;
    - iv. is not marketed or intended as an investment;
- and

v. does not carry a commission, either paid or calculated.

*Specific Appointment*—a prearranged appointment agreed upon by both parties and definite as to place and time.

*United States Armed Forces*—all components of the Army, Navy, Air Force, Marine Corps, and Coast Guard.

AUTHORITY NOTE: Promulgated in accordance with R.S.22:3, 22:1211, 22:1214; and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:2457 (November 2007).

### **§12511. Practices Declared False, Misleading, Deceptive or Unfair on a Military Installation**

A. The following acts or practices when committed on a military installation by an insurer or insurance producer with respect to the in-person, face-to-face solicitation of life insurance are declared to be false, misleading, deceptive or unfair:

1. knowingly soliciting the purchase of any life insurance product "door to door" or without first establishing a specific appointment for each meeting with the prospective purchaser;

2. soliciting service members in a group or "mass" audience or in a "captive" audience where attendance is not voluntary;

3. knowingly making appointments with or soliciting service members during their normally scheduled duty hours;

4. making appointments with or soliciting service members in barracks, day rooms, unit areas, or transient personnel housing or other areas where the installation commander has prohibited solicitation;

5. soliciting the sale of life insurance without first obtaining permission from the installation commander or the commander's designee;

6. posting unauthorized bulletins, notices or advertisements;

7. failing to present DD Form 2885, *Personal Commercial Solicitation Evaluation*, to service members solicited or encouraging service members solicited not to complete or submit a DD Form 2885;

8. knowingly accepting an application for life insurance or issuing a policy of life insurance on the life of an enlisted member of the United States Armed Forces without first obtaining for the insurer's files a completed copy of any required form which confirms that the applicant has received counseling or fulfilled any other similar requirement for the sale of life insurance established by regulations, directives or rules of the DOD or any branch of the Armed Forces.

B. The following acts or practices when committed on a military installation by an insurer or insurance producer constitute corrupt practices, improper influences or inducements and are declared to be false, misleading, deceptive or unfair:

1. using DOD personnel, directly or indirectly, as a representative or agent in any official or business capacity with or without compensation with respect to the solicitation or sale of life insurance to service members;

2. using an insurance producer to participate in any United States Armed Forces sponsored education or orientation program.

AUTHORITY NOTE: Promulgated in accordance with R.S.22:3, 22:1211, 22:1214; and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:2458 (November 2007).

**§12513. Practices Declared False, Misleading, Deceptive or Unfair Regardless of Location**

A. The following acts or practices by an insurer or insurance producer constitute corrupt practices, improper influences or inducements and are declared to be false, misleading, deceptive or unfair:

1. submitting, processing or assisting in the submission or processing of any allotment form or similar device used by the United States Armed Forces to direct a service member's pay to a third party for the purchase of life insurance. The foregoing includes, but is not limited to, using or assisting in using a service member's "MyPay" account or other similar internet or electronic medium for such purposes. This Subsection does not prohibit assisting a service member by providing insurer or premium information necessary to complete any allotment form;

2. knowingly receiving funds from a service member for the payment of premium from a depository institution with which the service member has no formal banking relationship. For purposes of this Section, a formal banking relationship is established when the depository institution:

a. provides the service member a deposit agreement and periodic statements and makes the disclosures required by the Truth in Savings Act, 12 U.S.C., §4301 et seq. and the regulations promulgated thereunder; and

b. permits the service member to make deposits and withdrawals unrelated to the payment or processing of insurance premiums;

3. employing any device or method or entering into any agreement whereby funds received from a service member by allotment for the payment of insurance premiums are identified on the service member's Leave and Earnings Statement or equivalent or successor form as "Savings" or "Checking" and where the service member has no formal banking relationship as defined in §12513.A.2;

4. entering into any agreement with a depository institution for the purpose of receiving funds from a service member whereby the depository institution, with or without compensation, agrees to accept direct deposits from a service member with whom it has no formal banking relationship;

5. using DOD personnel, directly or indirectly, as a representative or agent in any official or unofficial capacity with or without compensation with respect to the solicitation or sale of life insurance to service members who are junior in rank or grade, or to the family members of such personnel;

6. offering or giving anything of value, directly or indirectly, to DOD personnel to procure their assistance in encouraging, assisting or facilitating the solicitation or sale of life insurance to another service member;

7. knowingly offering or giving anything of value to a service member with a pay grade of E-4 or below for his or her attendance to any event where an application for life insurance is solicited;

8. advising a service member with a pay grade of E-4 or below to change his or her income tax withholding or state of legal residence for the sole purpose of increasing disposable income to purchase life insurance.

B. The following acts or practices by an insurer or insurance producer lead to confusion regarding source, sponsorship, approval or affiliation and are declared to be false, misleading, deceptive or unfair.

1. Making any representation, or using any device, title, descriptive name or identifier that has the tendency or capacity to confuse or mislead a service member into believing that the insurer, insurance producer or product offered is affiliated, connected or associated with, endorsed, sponsored, sanctioned or recommended by the U.S. Government, the United States Armed Forces, or any state or federal agency or government entity. Examples of prohibited insurance producer titles include, but are not limited to, "Battalion Insurance Counselor," "Unit Insurance Advisor," "Servicemen's Group Life Insurance Conversion Consultant" or "Veteran's Benefits Counselor."

2. Nothing herein shall be construed to prohibit a person from using a professional designation awarded after the successful completion of a course of instruction in the business of insurance by an accredited institution of higher learning. Such designations include, but are not limited to, Chartered Life Underwriter (CLU), Chartered Financial Consultant (ChFC), Certified Financial Planner (CFP), Master of Science in Financial Services (MSFS), or Masters of Science Financial Planning (MS).

3. Soliciting the purchase of any life insurance product through the use of or in conjunction with any third party organization that promotes the welfare of or assists members of the United States Armed Forces in a manner that has the tendency or capacity to confuse or mislead a service member into believing that either the insurer, insurance producer or insurance product is affiliated, connected or associated with, endorsed, sponsored, sanctioned or recommended by the U.S. Government, or the United States Armed Forces.

C. The following acts or practices by an insurer or insurance producer lead to confusion regarding premiums, costs or investment returns and are declared to be false, misleading, deceptive or unfair:

1. using or describing the credited interest rate on a life insurance policy in a manner that implies that the credited interest rate is a net return on premium paid;

2. excluding individually issued annuities, misrepresenting the mortality costs of a life insurance product, including stating or implying that the product "costs nothing" or is "free."

D. The following acts or practices by an insurer or insurance producer regarding SGLI or VGLI are declared to be false, misleading, deceptive or unfair:

1. making any representation regarding the availability, suitability, amount, cost, exclusions or limitations to coverage provided to a service member or dependents by SGLI or VGLI, which is false, misleading or deceptive;

2. making any representation regarding conversion requirements, including the costs of coverage, or exclusions or limitations to coverage of SGLI or VGLI to private insurers which is false, misleading or deceptive;

3. suggesting, recommending or encouraging a service member to cancel or terminate his or her SGLI policy or issuing a life insurance policy which replaces an existing SGLI policy unless the replacement shall take effect upon or after the service member's separation from the United States Armed Forces.

E. The following acts or practices by an insurer and or insurance producer regarding disclosure are declared to be false, misleading, deceptive or unfair:

1. deploying, using or contracting for any lead generating materials designed exclusively for use with service members that do not clearly and conspicuously disclose that the recipient will be contacted by an insurance producer, if that is the case, for the purpose of soliciting the purchase of life insurance;

2. failing to disclose that a solicitation for the sale of life insurance will be made when establishing a specific appointment for an in-person, face-to-face meeting with a prospective purchaser;

3. excluding individually issued annuities, failing to clearly and conspicuously disclose the fact that the product being sold is life insurance;

4. failing to make, at the time of sale or offer to an individual known to be a service member, the written disclosures required by Section 10 of the "Military Personnel Financial Services Protection Act," Pub. L. No. 109-290, p.16;

5. excluding individually issued annuities, when the sale is conducted in-person face-to-face with an individual known to be a service member, failing to provide the applicant at the time the application is taken:

a. an explanation of any free look period with instructions on how to cancel if a policy is issued; and

b. either a copy of the application or a written disclosure. The copy of the application or the written disclosure shall clearly and concisely set out the type of life insurance, the death benefit applied for and its expected first year cost. A basic illustration that meets the requirements of the department's Regulation 55, "Life Insurance Illustrations" shall be deemed sufficient to meet this requirement for a written disclosure.

F. The following acts or practices by an insurer or insurance producer with respect to the sale of certain life insurance products are declared to be false, misleading, deceptive or unfair:

1. excluding individually issued annuities, recommending the purchase of any life insurance product which includes a side fund to a service member in pay grades E-4 and below unless the insurer has reasonable grounds for believing that the life insurance death benefit, standing alone, is suitable;

2. offering for sale or selling a life insurance product which includes a side fund to a service member in pay grades E-4 and below who is currently enrolled in SGLI, is presumed unsuitable unless, after the completion of a needs assessment, the insurer demonstrates that the applicant's SGLI death benefit, together with any other military survivor benefits, savings and investments, survivor income, and other life insurance are insufficient to meet the applicant's insurable needs for life insurance:

a. "insurable needs" are the risks associated with premature death taking into consideration the financial obligations and immediate and future cash needs of the applicant's estate and/or survivors or dependents;

b. "other military survivor benefits" include, but are not limited to: the Death Gratuity, Funeral Reimbursement, Transition Assistance, Survivor and Dependents' Educational Assistance, Dependency and Indemnity Compensation, TRICARE Healthcare benefits, Survivor Housing Benefits and Allowances, Federal Income Tax Forgiveness, and Social Security Survivor Benefits;

3. excluding individually issued annuities, offering for sale or selling any life insurance contract which includes a side fund:

a. unless interest credited accrues from the date of deposit to the date of withdrawal and permits withdrawals without limit or penalty;

b. unless the applicant has been provided with a schedule of effective rates of return based upon cash flows of the combined product. For this disclosure, the effective rate of return will consider all premiums and cash contributions made by the policyholder and all cash accumulations and cash surrender values available to the policyholder in addition to life insurance coverage. This schedule will be provided for at least each policy year from one to 10 and for every fifth policy year thereafter ending at age 100, policy maturity or final expiration; and

c. which by default diverts or transfers funds accumulated in the side fund to pay, reduce or offset any premiums due;

4. excluding individually issued annuities, offering for sale or selling any life insurance contract which after considering all policy benefits, including but not limited to endowment, return of premium or persistency, does not comply with standard nonforfeiture law for life insurance.

AUTHORITY NOTE: Promulgated in accordance with R.S.22:3, 22:1211, 22:1214; and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:2459 (November 2007).

#### **§12515. Severability**

A. If any provision of these Sections or the application thereof to any person or circumstance is held invalid for any reason, the invalidity shall not affect the other provisions or any other application of these Sections which can be given effect without the invalid provisions or application. To this end all provisions of these Sections are declared to be severable.

AUTHORITY NOTE: Promulgated in accordance with R.S.22:3, 22:1211, 22:1214; and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:2460 (November 2007).

#### **§12517. Effective Date**

A. This regulation shall become effective upon final publication in the *Louisiana Register* and shall apply to acts or practices committed on or after the effective date.

AUTHORITY NOTE: Promulgated in accordance with R.S.22:3, 22:1211, 22:1214; and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:2460 (November 2007).

James J. Donelon  
Commissioner

0711#052

**RULE**

**Department of Natural Resources  
Office of Conservation**

Fees (LAC 43:XIX.701, 703, and 707)

Pursuant to power delegated under the laws of the state of Louisiana, and particularly Title 30 of the Louisiana Revised Statutes of 1950, as amended, the Office of Conservation amends LAC 43:XIX.701, 703, and 707 (Statewide Order No. 29-R) in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq. This action will adopt Statewide Order No. 29-R-07/08 (LAC 43:XIX, Subpart 2, Chapter 7), which establishes the annual Office of Conservation Fee Schedule for the collection of Application, Production, and Regulatory Fees, and will replace the existing Statewide Order No. 29-R-06/07.

**Title 43**

**NATURAL RESOURCES**

**Part XIX. Office of Conservation—General Operations  
Subpart 2. Statewide Order No. 29-R**

**Chapter 7. Fees**

**§701. Definitions**

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*Application for Noncommercial Injection Well*—an application to construct and/or operate a Class I, II, III, or V noncommercial injection well, as authorized by Statewide Order Nos. 29-B (LAC 43:XIX.401 et seq.), 29-M (LAC 43:XVII.301 et seq.), 29-N-1 (LAC 43:XVII.101 et seq.), 29-N-2 (LAC 43:XVII.201 et seq.), 29-M-2 (LAC 43:XVII.3101 et seq.), successor regulations.

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*BOE*—annual barrels oil equivalent. Gas production is converted to BOE by dividing annual mcf by a factor of 9.0.

*Capable Gas*—natural and casing head gas not classified as incapable gas well gas or incapable oil well gas by the Department of Revenue, as of December 31, 2006.

*Capable Oil*—crude oil and condensate not classified as incapable oil or stripper oil by the Department of Revenue, as of December 31, 2006.

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*Production Well*—any well which has been permitted by and is subject to the jurisdiction of the Office of Conservation, excluding wells in the permitted and drilling in progress status, Class II injection wells, liquid storage cavity wells, commercial salt water disposal wells, Class V injection wells, wells which have been plugged and abandoned, wells which have reverted to landowner for use as a fresh water well (Statewide Order No. 29-B, LAC 43:XIX.137.G, or successor regulations), multiply completed wells reverted to a single completion, and stripper oil wells or incapable oil wells or incapable gas wells

certified by the Severance Tax Section of the Department of Revenue, as of December 31, 2006.

*Regulatory Fee*—an amount payable annually to the Office of Conservation, in a form and schedule prescribed by the Office of Conservation, on Class II wells, Class III wells, storage wells, Type A facilities, and Type B facilities in an amount not to exceed \$875,000 for Fiscal Year 2000-2001 and thereafter. No fee shall be imposed on a Class II well of an operator who is also an operator of a stripper crude oil well or incapable gas well certified pursuant to R.S. 47.633 by the Severance Tax Section of the Department of Revenue as of December 31, 2006, and located in the same field as such Class II well. Operators of Record, excluding operators of wells and including, but not limited to, operators of gasoline/cycling plants, refineries, oil/gas transporters, and/or certain other activities subject to the jurisdiction of the Office of Conservation are required to pay an annual registration fee of \$105. Such payment is due within the time frame prescribed by the Office of Conservation.

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**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:21 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Conservation, LR 14:542 (August 1988), amended LR 15:551 (July 1989), LR 21:1249 (November 1995), LR 24:458 (March 1998), LR 24:2127 (November 1998), LR 25:1873 (October 1999), LR 26:2302 (October 2000), LR 27:1919 (November 2001), LR 28:2366 (November 2002), LR 29:2499 (November 2003), LR 31:2950 (November 2005), LR 32:2087 (November 2006), LR 33:2461 (November 2007).

**§703. Fee Schedule for Fiscal Year 2007-2008**

A. ...

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B. Regulatory Fees

1. Operators of each permitted Type A Facility are required to pay an annual Regulatory Fee of \$6,964 per facility.

2. Operators of each permitted Type B Facility are required to pay an annual Regulatory Fee of \$3,482 per facility.

3. Operators of record of permitted non-commercial Class II injection/disposal wells are required to pay \$708 per well.

4. Operators of record of permitted Class III and Storage wells are required to pay \$708 per well.

C. Class I Well Fees. Operators of permitted Class I wells are required to pay \$10,389 per well.

D. Production Fees. Operators of record of capable oil wells and capable gas wells are required to pay according to the following annual production fee tiers.

Tier	Annual Production (Barrel Oil Equivalent)	Fee (\$ per Well)
Tier 1	0	16
Tier 2	1 - 5,000	87
Tier 3	5,001 - 15,000	251
Tier 4	15,001 - 30,000	413
Tier 5	30,001 - 60,000	657
Tier 6	60,001 - 110,000	907
Tier 7	110,001 - 9,999,999	1,115

E. - E.3. ...

F. Pipeline Safety Inspection Fees

1. Owners/Operators of jurisdictional gas pipeline facilities are required to pay an annual Gas Pipeline Safety Inspection Fee of \$20.20 per mile, or a minimum of \$360, whichever is greater.

2. Owners/Operators of jurisdictional hazardous liquids pipeline facilities are required to pay an annual Hazardous Liquids Pipeline Safety Inspection Fee of \$20.20 per mile, or a minimum of \$360, whichever is greater.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:21 et seq., R.S. 30:560 and 706.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 14:543 (August 1988), amended LR 15:552 (July 1989), LR 21:1250 (November 1995), LR 24:458 (March 1998), LR 24:2128 (November 1998), LR 25:1874 (October 1999), LR 26:2304 (October 2000), LR 27:1920 (November 2001), LR 28:2368 (November 2002), LR 29:350 (March 2003), LR 29:2501 (November 2003), LR 30:2494 (November 2004), LR 31:2950 (November 2005), LR 32:2088 (November 2006), LR 33:2461 (November 2007).

#### **§707. Severability and Effective Date**

A. The fees set forth in §703 are hereby adopted as individual and independent rules comprising this body of rules designated as Statewide Order No. 29-R-07/08 and if any such individual fee is held to be unacceptable, pursuant to R.S. 49:968(H)(2), or held to be invalid by a court of law, then such unacceptability or invalidity shall not affect the other provisions of this order which can be given effect without the unacceptable or invalid provisions, and to that end the provisions of this order are severable.

B. This Order (Statewide Order No. 29-R-07/08) supersedes Statewide Order No. 29-R-06/07 and any amendments thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:21 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 14:544 (August 1988), amended LR 15:552 (July 1989), LR 21:1251 (November 1995), LR 24:459 (March 1998), LR 24:2128 (November 1998), LR 25:1874 (October 1999), LR 26:2305 (October 2000), LR 27:1921 (November 2001), LR 28:2368 (November 2002), LR 29:2502 (November 2003), LR 30:2494 (November 2004), LR 31:2950 (November 2005), LR 32:2088 (November 2006), LR 33:2462 (November 2007).

James H. Welsh  
Commissioner

0711#045

#### **RULE**

#### **Department of Public Safety and Corrections Office of Management and Finance State Uniform Construction Code Council**

#### **Third Party Providers (LAC 55:VI.705)**

In accordance with the provisions of Act 12 of the 2005 First Extraordinary Session, R.S. 40:1730:22(C) and (D) and R.S. 40:1730.34(B) relative to the authority of the Louisiana State Uniform Construction Code Council to promulgate and enforce rules, the Louisiana State Uniform Construction Code Council has amended Chapter 7, Subsections 705.B and 705.D to provide for higher insurance requirements for third party providers and to require that inspection reports be provided to the jurisdiction.

## **Title 55**

### **PUBLIC SAFETY**

#### **Part VI. Uniform Construction Code**

#### **Chapter 7. Certificates of Registration**

#### **§705. Third Party Providers**

A. - A.1. ...

B. Insurance. All third party providers shall carry at least \$500,000 in professional liability insurance. Proof of valid and current insurance coverage must be provided to the Council upon registration and renewal of registration.

C. - D.2. ...

3. Third party providers providing inspection services for non-governmental entities shall provide written copies of the approved inspection reports to the code enforcement officer of the jurisdiction prior to the issuance of the certificate of occupancy.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.22(C) and (D).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, State Uniform Construction Code Council, LR 33:292 (February 2007), amended LR 33:2462 (November 2007).

Jill P. Boudreaux  
Acting Undersecretary

0711#004

#### **RULE**

#### **Department of Public Safety and Corrections Gaming Control Board**

Progressive Electronic Gaming Devices  
(LAC 42:VII.4204, IX.4204, and XIII.4204)

The Louisiana Gaming Control Board has amended LAC 42:VII.4204, IX.4204, and XIII.4204 as amended in accordance with R.S. 27:15 and 24, and the Administrative Procedure Act, R.S. 49:950 et seq.

## **Title 42**

### **LOUISIANA GAMING**

#### **Part VII. Pari-Mutuel Live Racing Facility Slot Machine Gaming**

#### **Chapter 42. Racetracks: Electronic Gaming Devices**

#### **§4204. Progressive Electronic Gaming Devices**

A. - F.1. ...

G. Consistent Odds on Linked EGD's

1. When two or more progressive gaming devices are linked together, each device on the link shall have the same probability of winning any particular progressive award offered, and the probability shall be in proportion to the amount wagered. The method of equalizing the expected probability of winning any progressive award shall be conspicuously displayed on each device connected to the system.

H. - P.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 26:775 (April 2000), amended LR 31:1604 (July 2005), LR 33:2462 (November 2007).

**Part IX. Landbased Casino Gaming**  
**Subpart 1. Economic Development and**  
**Gaming Corporation**

**Chapter 42. Electronic Gaming Devices**

**§4204. Progressive Electronic Gaming Devices**

A. - F.1. ...

G. Consistent Odds on Linked EGD's

1. When two or more progressive gaming devices are linked together, each device on the link shall have the same probability of winning any particular progressive award offered, and the probability shall be in proportion to the amount wagered. The method of equalizing the expected probability of winning any progressive award shall be conspicuously displayed on each device connected to the system.

H. - P.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and R.S. 27:24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 26:2311 (October 2000), amended LR 31:1605 (July 2005), LR 33:2463 (November 2007).

**Part XIII. Riverboat Gaming**

**Subpart 2. State Police Riverboat Gaming Division**

**Chapter 42. Electronic Gaming Devices**

**§4204. Progressive Electronic Gaming Devices**

A. - F.1. ...

G. Consistent Odds on Linked EGD's

1. When two or more progressive gaming devices are linked together, each device on the link shall have the same probability of winning any particular progressive award offered, and the probability shall be in proportion to the amount wagered. The method of equalizing the expected probability of winning any progressive award shall be conspicuously displayed on each device connected to the system.

H. - P.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 26:718 (April 2000), amended LR 31:1607 (July 2005), LR 33:2463 (November 2007).

H. Charles Gaudin  
Chairman

0711#037

**RULE**

**Department of Revenue**  
**Policy Services Division**

**Tax Preparers—Electronic Filing Requirement**  
**(LAC 61:III.1501)**

Under the authority of R.S. 47:1511 and 47:1520 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, has adopted LAC 61:III.1501 to provide for the requirement for tax preparers to file certain individual income tax returns electronically.

Act 452 of the 2006 Regular Session of the Legislature amended R.S. 47:1520(A) to authorize the secretary to require certain tax preparers to file returns electronically

under certain circumstances and to require that the electronic filing requirements be implemented by administrative rule in accordance with the Administrative Procedure Act.

**Title 61**

**REVENUE AND TAXATION**

**Part III. Administrative Provisions and Miscellaneous**  
**Chapter 15. Electronic Filing and Payments**

**§1501. Requirement for Tax Preparers to File Income**  
**Tax Returns Electronically**

A. Definitions

*Authorized Individual Income Tax Return*—any individual tax return that can be filed electronically.

*Filed Electronically*—filing a tax return by electronic means using software that has been approved for electronic filing by the Louisiana Department of Revenue.

*Individual Income Tax Return*—any tax return required to be filed by R.S. 47:101.

*Tax Preparer*—a person or entity that prepares for compensation or employs one or more persons to prepare for compensation any Louisiana individual income tax return.

a. A tax preparer is an entity that is assigned a Tax Identification Number and includes all of the entity's locations.

b. The combined total of the returns prepared at all of the tax preparer's locations will be used to determine whether or not the tax preparer is subject to the electronic filing mandate.

B. Individual income tax returns prepared by a tax preparer that prepares more than 100 Louisiana individual income tax returns during any calendar year are required to be filed electronically as follows.

1. For returns due on or after January 1, 2008, 30 percent of the authorized individual income tax returns must be filed electronically.

2. For returns due on or after January 1, 2010, 60 percent of the authorized individual income tax returns must be filed electronically.

3. For returns due on or after January 1, 2012, 90 percent of the authorized individual income tax returns must be filed electronically.

C. A tax preparer that is subject to the electronic filing mandate must be accepted in the IRS e-file Program and have an electronic filer identification number (EFIN) and use software that has been approved for e-file by the Louisiana Department of Revenue.

D. Once a tax preparer is subject to the electronic filing mandate, the tax preparer must continue to e-file the required percentage of authorized individual income tax returns in future years regardless of the number of returns filed.

E. The secretary may waive the electronic filing requirement if it is determined that complying with the requirement would cause an undue hardship.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511 and R.S. 47:1520.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 33:2463 (November 2007).

Cynthia Bridges  
Secretary

0711#032

## RULE

### Department of Social Services Office of Community Services

#### Allocation of Hurricane Relief Funds Supplemental Appropriation (LAC 67:V.717)

The Department of Social Services (DSS), Office of Community Services (OCS), has adopted LAC 67:V.717, Allocation of Hurricane Relief Funds Supplemental Appropriation.

Under the Department of Defense Appropriations Act (H.R. 2863), \$220,901,534 was allocated to Louisiana in a supplemental appropriation to Social Service Block Grant funds for necessary expenses related to the consequences of hurricanes in the Gulf of Mexico in calendar year 2005. In addition to other uses permitted by Title XX of the Social Security Act, funds appropriated under this heading were used for health services, including mental health services, and for repair, renovation and construction of health facilities, including mental health facilities. It recognized that the hurricanes in the Gulf of Mexico in calendar year 2005 imposed extreme demands for social and health care services in affected States. States may use SSBG funds for a wide array of human services. The Administration for Children and Families, (ACF) approved a waiver of the provisions under Section 2005 (a) of the Social Security Act on June 2, 2006 to allow the use of SSBG Supplemental funds for the rebuilding and construction of childcare facilities in Louisiana.

The Office of Community Services entered into contracts, Memoranda of Understanding, or other agreements with the entities listed in this rule including but not limited to such services as health services, including mental health services, for repair, renovation, and construction of facilities, including Class A child care facilities and mental health facilities, intensive benefits, and case management for the citizens of this state effected by the hurricanes.

#### Title 67

#### SOCIAL SERVICES

#### Part V. Office of Community Services

#### Subpart 2. Community Services

#### Chapter 7. Social Services Block Grant

#### §717. Allocation of Hurricane Relief Funds SSBG Supplemental Appropriation

##### A. Purpose, Need, and Eligibility

1. Under the Department of Defense Appropriations Act (H.R. 2863), \$220,901,534 has been allocated to Louisiana in a supplemental appropriation to Social Service Block Grant (SSBG) funds for necessary expenses related to the consequences of hurricanes in the Gulf of Mexico in calendar year 2005. In addition to other uses permitted by Title XX of the Social Security Act, funds appropriated under this heading may be used for health services, including mental health services, and for repair, renovation and construction of facilities, including mental health facilities. The Administration for Children and Families, (ACF) approved a waiver of the provisions under Section 2005 (a) of the Social Security Act on June 2, 2006 to allow the use of SSBG Supplemental funds for the rebuilding and construction of childcare facilities in Louisiana.

2. The Office of Community Services (OCS) proposes to enter into contracts, memoranda of understanding, or other agreements with the entities listed in this Rule including but not limited to such services as health services, including mental health services, for repair, renovation, and construction of facilities, including Class A child care facilities and mental health facilities, intensive benefits, and case management for the citizens of this state effected by the hurricanes. This Rule is effective for the SSBG allotment of federal fiscal year 2006.

3. It recognizes that the hurricanes in the Gulf of Mexico in calendar year 2005 have imposed extreme demands for social and health care services in affected states. States may use SSBG funds for a wide array of human services.

4. Because of the nature of the natural disaster, many affected individuals and families will not have in their possession customary documentation of their economic status to substantiate eligibility for SSBG supported services. Also, many individuals or families who may not have been eligible for assistance prior to the hurricanes may be, because of the devastation, eligible now. Therefore, "presumptive eligibility" determinations may be made based on applicant residence in known areas of devastation at the time of hurricane Katrina (H Katrina) or hurricane Rita (H Rita) or post-hurricane experience of affected individuals or families. Each entity that receives the SSBG funding can have additional or different eligibility requirements.

5. The following areas to be addressed include:

a. The health care needs of people affected by the hurricanes in the Gulf of Mexico in calendar year 2005 and who lack health insurance or other adequate access to care and to help health care create a 'safety net.' This would include intended uses of these funds in areas of mental health service provision and provision for substance and addictive disorder interventions and services.

b. Expanding services to meet the needs of families in the child welfare system in the areas of foster care, adoption, prevention, intervention, and protective services in child welfare.

c. Institutions serving these populations in order to build community health centers, rural hospitals and clinics, community mental health centers, public hospitals, and other providers with substantial percentages of uninsured patients. Funds may be made available for repairs and reconstruction needed to allow health centers and similar providers to resume or expand operations, or to help key providers meet salary and other costs associated with resuming or restoring health services.

d. Providing social service delivery and case management services to families in order to assist with identification of housing needs, development of individualized recovery plans and referral of families to available disaster relief services, provide for case management and follow-up with families, and to provide for direct emergency assistance in human services.

e. Restoring critical child care services will support families as they return to work in hurricane affected parishes. Child care supports are vital to reestablishing a workforce and strengthening our state's economy. Child care is a critical need to promote independence and safety of families and children. Restoring the child care infrastructure

is a current need in Louisiana. Funds will be available to rebuild the child care infrastructure by repairing and/or building Class A child care centers and providing training and technical assistance necessary in attracting and retaining a child care workforce.

B. Department of Social Services

1. Child Welfare Services—Foster Care, Adoption, Prevention, Intervention and Protective Services. Services will include anger management, parenting skills, counseling, etc. Visitation expenses include travel for the foster child and foster parent/caretaker from their displaced location to the birthparent's location, lodging, and meals during the travel. This includes travel both within and outside of Louisiana. It is estimated that 2/3 of impacted children lost at least a significant portion or all of their personal belongings that have yet to be replaced. These were possessions lost or damaged during the time during and after H Katrina or H Rita. These funds will be used in this arena. These funds will be used to provide for the youth effected by H Katrina or H Rita in OCS independence programs. These are programs used to assist children aging out of foster care custody and who have greater needs for transitional assistance than is typically provided, especially in the aftermath of the upheaval and displacement brought on by the storms of 2005. These funds will be used for foster care reunification services, as additional demands for such services are felt as a result and impact on the child welfare system of services due to H Katrina and H Rita. After most disasters, there is an evidenced increase in abuse and/or neglect as well as disruptions in foster care. Such funds will be used to obtain trauma-related services to help stabilize placements and prevent disruptions by providing increased service access for family services, respite care, counseling, parenting classes, etc.

2. Child Care Services. Louisiana must rebuild the child care infrastructure in the hurricane affected parishes to assist families in returning to work while ensuring their children receive quality child care. To meet the critical need for child care in Louisiana, DSS/OFS will implement a child care support system to rebuild the child care sector. This will be done by three initiatives.

a. Training and Technical Assistance for Child Care Providers. The objective of this program is to provide intensive training and technical assistance for current and prospective child care providers to increase the supply of child care businesses opening and reopening in the hurricane affected areas. Training and technical assistance will also be provided to current and prospective child care providers and other professionals engaged in the system. The services will be available in Calcasieu, Cameron, Orleans, Jefferson, Plaquemines, St. Bernard, St. Tammany and Washington Parishes.

b. Furnishing Child Care Centers Program. This component will offer a program for equipping, furnishing, and supplying Class A Child Care centers whose licenses were suspended due to hurricane-related damage and have reopened, Class A centers in the process of opening or reopening, or Class A centers being constructed. An assessment of each center will be conducted and a priority for equipping Class A child care centers will be established. Furnishings, equipment and supplies include but are not limited to curriculum, books, furniture, appliances, office

equipment, developmentally and age appropriate play equipment for both indoor and outdoor space and other items appropriate to the operation of a Class A licensed day care center.

i. Eligibility will be limited to the Class A child care centers that are currently participating in the Child Care Assistance Program (CCAP) funding; those reopening, that participated in the CCAP within a year prior to August 2005; or for those new Class A child care centers that have opened since August 29, 2005, and are committing to serve CCAP eligible children within 60 days of opening for business.

ii. The program will be offered in Calcasieu, Cameron, Orleans, Jefferson, Plaquemines, St. Bernard, St. Tammany and Washington parishes.

iii. Eligible expenses dated October 1, 2005 or after will be reimbursable. Eligible reimbursable expenses are those not covered by other reimbursements, such as insurance and other state or federal funds.

iv. Class A child care centers participating in this program must agree to accept all requirements as defined by SSBG and the state, including federal and state interest.

c. Child Care Facilities Restoration Fund: This program will provide funds for repair and/or construction of Class A child care centers in hurricane devastated parishes Calcasieu, Cameron, Orleans, Jefferson, Plaquemines, St. Bernard, St. Tammany and Washington. The state must apply its appropriate administrative standards when issuing sub awards to guarantee the protection and disposition of real estate rebuilt, constructed or purchased with grant funds and the state is also required to file a Notice of Federal Interest document to officially recognize the Federal Government's continuing financial interest in the property. The minimum eligibility criteria for the Child Care Facilities will include the following:

i. Previously held Class A license or agree to become a Class A licensed facility and agree to maintain a Class A license.

ii. For Class A centers that previously held a Class A license, have served children subsidized with CCAP funds within 12 months prior to August 2005 and commit to doing so moving forward, and provide assurance that SSBG funding along with any other identified funding will allow the center to reopen and serve children.

iii. For an entity wishing to open a new Class A child care center, must declare intention to serve children subsidized with CCAP funding and provide assurance that SSBG funding along with any other identified funding will allow the center to reopen and serve children.

iv. Must provide evidence of current demand for services.

v. Must provide evidence of capacity to provide quality child care services.

vi. Must agree to accept all requirements as defined by SSBG and the state including federal and state interest.

vii. Eligible expenses dated October 1, 2005 or after will be reimbursable. Eligible reimbursable expenses are those not covered by other reimbursements, such as insurance and other state or federal funds.

C. Department of Health and Hospitals

1. Behavioral Health Services

a. Funds shall be used to restore and expand mental health services, substance abuse treatment and prevention services and developmental disability services as follows:

- i. immediate intervention—crisis response system;
- ii. substance abuse treatment and prevention;
- iii. behavioral health services for children and adolescents;
- iv. preventing or reducing inappropriate institutional care;
- v. behavioral health program restoration and resumption;
- vii. health care work force; and
- vii. operational tools

2. Preventive and Primary Care. Funds shall be used to issue grant awards to parishes as bridge funding to restore and develop comprehensive and integrated primary, preventive and behavioral health care services, with an emphasis on restoring safety net services for the uninsured and underinsured.

D. Louisiana State University Health Sciences Center (LSU-HSC)

1. Funds Allocated to LSU. HSC would be used as follows.

- a. Keep the healthcare workforce intact by retaining faculty and residents.
- b. Set up primary care clinics across the city with funding for salaries for dentists, physicians, nurses and allied health personnel.
- c. Expand capabilities to address psychiatric needs in New Orleans and surrounding areas.
- d. Support the General Dentistry Residency, Oral and Maxillofacial Surgery Residency, and Oral Medicine programs that provide preventive and primary care to the uninsured at multiple sites in the state.
- e. Prepare an adequate number of allied health professionals who can function in primary, secondary, and tertiary care through the School of Allied Health Professions. The LSUHSC-New Orleans is a primary source of graduate level practitioners in the areas of Physical Therapy, Occupational Therapy, Speech and Language Pathology, Audiology, Medical Technology, Cardiopulmonary Technology, and Rehabilitation Counseling for New Orleans and the state of Louisiana.
- f. Resume Early Intervention Institute and the Human Development Center direct service, consultative, and advocacy programs for individuals with disabilities. Reestablishing these services will ensure maintenance of high-quality health care educational experiences for individuals who work with these citizens who represent a portion of our population that is typically uninsured, underserved, and at the greatest risk for developing physical and mental problems.

E. LSU Health Care Services Division (HCS D)

1. Funding to the HCS D in the current fiscal year will enable the Division to continue providing the following services:

- a. the enhancement of primary care services at the regional hospitals to accommodate the population shifts which have occurred;
- b. the patient pharmaceutical procurement program which matches needy patients with low cost medications that

are essential to proper management of such conditions as diabetes, hypertension, asthma, HIV and asthma which have the effect of preventing further and or rapid development of the disease;

- c. provide needed financing for eight neighborhood health units currently under development for placement in New Orleans;
- d. continued funding of the EMED currently at the New Orleans Convention Center;
- e. funding for the Level I Trauma Service operational costs anticipated at the Elmwood Hospital location;
- f. Provide the HCS D hospitals with the ability to continue its current level of support for Mental and Behavioral Health Programs.

F. Louisiana Family Recovery Corps

1. The Department of Social Services, Office of Community Services (DSS/OCS) will contract with the Louisiana Family Recovery Corps (LFRC) to provide (SSBG) approved services to individuals and families displaced by Hurricanes Katrina or Rita through programs developed by LFRC. The LFRC, an independent non-profit organization, was created to mobilize and coordinate humanitarian services to displaced Louisiana families in the wake of these disasters.

2. Eligibility for SSBG approved services is limited to individuals and families that were displaced as a result of Hurricane Katrina or Hurricane Rita. LFRC, in coordination with the department, is authorized to develop programs with more restrictive eligibility requirements than those provided above, including but not limited to financial eligibility, pre-storm residence, current or prospective residence, age, and disability.

3. Eligible services are those directed at the goals of:

- a. achieving or maintaining economic self-support to prevent, reduce, or eliminate dependency;
- b. achieving or maintaining self-sufficiency, including reduction or prevention of dependency;
- c. preventing or remedying neglect, abuse, or exploitation of children and adults unable to protect their own interests, or preserving, rehabilitating, or reuniting families;
- d. preventing or reducing inappropriate institutional care by providing for community-based care, home-based care, or other forms of less intensive care; and,
- e. securing referral or admission for institutional care when other forms of care are not appropriate, or providing services to individuals in institutions.

4. LFRC, in coordination with the department, is authorized to develop programs that provide services that are necessary to address the consequences of the hurricanes for the eligible population and are directed at the goals of SSBG.

G. Tulane University Health Sciences Center

1. Tulane University will help sustain the health care safety net in New Orleans, as well as assist in responding to the new health care crisis in this community. These funds may be utilized in the following areas:

- a. sustain, and when needed, enhance capacity to provide primary care, emergency care, public health preparedness and training, adult and child psychiatry, women's health, children's health, health equality,

environmental health, infectious diseases to the to under and uninsured;

b. maintain a high-quality biomedical workforce in the greater New Orleans region through retention of existing healthcare faculty and residents;

c. support for the School of Public Health and Tropical Medicine;

d. retention and establishment of primary care clinics;

e. support for Cancer Center and Gene Therapy Center;

f. support for clinical research and supporting faculty and staff.

H. Governor's Office of Elderly Affairs. The Department of Social Services will enter into an agreement with the Governor's Office of Elderly Affairs to provide necessary services to seniors as a result of hurricanes Rita or Katrina of 2005. Eligibility for SSBG approved services is as follows:

a. Age 60 or over, and

b. Individuals with an adult onset disability who have a need for living assistance.

c. Clients must have resided in one of the 37 federally declared disaster parishes at the time of hurricanes Katrina and Rita of 2005. Those parishes are Acadia, Allen, Ascension, Assumption, Calcasieu, Cameron, Beauregard, East Baton Rouge, East Feliciana, Evangeline, Iberia, Iberville, Jefferson, Jefferson Davis, Lafayette, Lafourche, Livingston, Orleans, Plaquemines, Pointe Coupee, Sabine, St. Bernard, St. Charles, St. Helena, St. James, St. John, St. Landry, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne, Vermilion, Vernon, Washington, West Baton Rouge, and West Feliciana Parish.

3. Services to be provided include the following:

a. Material Aid: Assistance includes but is not limited to assistance with prescription drugs not covered by another program, adult diapers or other personal hygiene items, basic furniture items (beds or bedding), assistance devices, such as walkers, canes, wheelchairs, and other goods such medical supplies

b. Minor Home Repairs needed in order to make homes safe and livable, such as replacement of windows, doors, door locks, minor roof repairs, flooring replacement, replacement of insulation, repairs to heating and cooling systems, and other minor repairs.

c. Safety and access installations includes the installation of access ramps, safety grab bars in bathrooms

d. Chore Services – necessary services could include, but are not limited to heavy indoor and outdoor housework such as mold removal, drapery removal/cleaning/re-installation, carpet sanitization, floor stripping and re-conditioning, debris removal, tree-trimming, or other lawn clean-up. (Routine lawn care or housework is not an allowable expense.)

e. Information and Assistance (Information and Referral): This service assesses the client and determines what type of assistance is needed or makes provisions to provide this service. Most clients will only receive one unit of this service not to exceed \$25, which includes the agency placing this information into *SAMS* the existing client tracking system for GOEA.

f. Transportation: This service will provide door-to-door assistance for clients when there is no other comparable

service available. The client would make a call to reserve transport for medical appointments, to merchants who provide basic needs and any location where an applicant has an appointment for services (example: food stamp office, Road Home Center, local Council on Aging, etc

g. Home Care: This service will provide supervision and companionship in a home setting, not an institution, to ensure the health and safety of a senior or an individual with onset disabilities who cannot be left alone

h. Home Delivered Meals: Home-delivered meals are those services or activities designed to prepare and deliver one or more meals a day to an individual's residence in order to prevent institutionalization, malnutrition, and feelings of isolation.

i. Other Needs: This category will serve clients with a service not being provided by any other source.

I. Orleans Metro Housing

1. The Department of Social Services will contract with the Orleans Metro Housing (local non-profit) to assist hurricane-affected clients in Orleans Parish, in locating suitable affordable housing in Orleans Parish.

2. To be eligible for services, clients must have lived in Orleans Parish prior to the storms of 2005. There are no age or income or other requirements.

3. Services provided by Orleans Metro Housing, include: community outreach (through local churches, door-to-door in neighborhoods, etc.) to those in need of housing assistance in Orleans Parish, assisting clients in determining the types of housing that will best suit their needs and budget, matching up clients with available housing, maintaining an up-to-date inventory of sale and rental properties in the parish, referring clients to other non-profit home-buying programs if determined client has sufficient income, referring clients to agencies that provide financial assistance for housing and household expenses, negotiating with leasers or landlords on behalf of clients, and other related services.

AUTHORITY NOTE: Promulgated in accordance with Title XX of the Social Security Act and Department of Defense Appropriations Act (H.R. 2863).

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Services, LR 33:2464 (November 2007).

Ann Silverberg Williamson  
Secretary

0711#083

## **RULE**

### **Department of Social Services Office of Family Support**

Electronic Benefits Transfer—Methods of Issuing  
Benefits Electronically (LAC 67:III.803)

Editor's Note: This Rule is being repromulgated to move this section to Chapter 8, as the previously named Section was already in use. The original Rule may be viewed in its entirety on pages 1878-1879 of the September 20, 2007 edition of the *Louisiana Register*.

The Department of Social Services, Office of Family Support, amended LAC 67:III, Subpart 1, Chapter 4, Electronic Benefits Issuance System to provide delivery of

benefits through electronic disbursements. Electronic disbursement has allowed the agency to provide effective and efficient disbursement of payments to our clients while eliminating the need to print and mail checks.

The agency amended Chapter 4, Electronic Benefits Issuance System, in its entirety which adds the types of electronic disbursements utilized and to address program payments by Electronic Benefits Transfer (EBT) to Family Independence Temporary Assistance Program (FITAP), Kinship Care Subsidy Program (KCSP), and Food Stamp Program Benefits. Sections in Chapter 4 have been recodified and renumbered.

**Title 67**  
**SOCIAL SERVICES**

**Part III. Office of Family Support**

**Subpart 1. General Administrative Procedures**

**Chapter 8. General Administrative Procedure**

**§803. Benefit Delivery**

A. The Office of Family Support delivers benefits in the following manner:

1. electronic benefits transfer; or
2. direct deposit; or
3. stored value cards; or
4. checks.

AUTHORITY NOTE: Promulgated by 7 CFR 274.12; and ACF Guidance: ACYF—IM-CC-05-03, Section 404(g) and Section 454b(b) of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 33:1879 (September 2007), repromulgated LR 33:2468 (November 2007).

Ann Silverberg Williamson  
Secretary

0711#021

**RULE**

**Department of Social Services**  
**Office of Family Support**

TANF—Jobs for America's Graduates Louisiana  
(JAGS-LA) Program (LAC 67:III.5591)

In accordance with R.S.49: 950 et seq., the Administrative Procedure Act, the Department of Social Services, Office of Family Support, adopted LAC 67:III:5591 Jobs for America's Graduates Louisiana (JAGS-LA) Program as a new TANF Initiative.

Pursuant to House Bill 1 of the 2007 Regular Session of the Louisiana Legislature, the agency adopted the JAGS-LA Program to keep in school those students at risk of failing in school, to capture out-of-school youth in need of a high school education, to provide an avenue for achieving academically, and to assist students in ultimately earning recognized credentials that will make it possible for them to exit school and enter post-secondary education and/or the workforce.

This Rule was effected July 1, 2007, by a Declaration of Emergency published in the July 2007 issue of the *Louisiana Register*.

**Title 67**  
**SOCIAL SERVICES**

**Part III. Office of Family Support**

**Subpart 15. Temporary Assistance to Needy Families  
(TANF) Initiatives**

**Chapter 55. TANF Initiatives**

**§5591. Jobs for America's Graduates Louisiana (JAGS-LA) Program**

A. Effective July 1, 2007, the Office of Family Support shall enter into a Memorandum of Understanding with the Department of Education for the Jobs for America's Graduates Louisiana (JAGS-LA) Program.

B. These services meet the TANF goal to prevent and reduce the incidence of out of wedlock births by providing intervention and improved life prospects for students who show evidence of failing, dropping out or engaging in negative behaviors that can lead to dependency, out-of-wedlock births, imprisonment, etc.

C. Eligibility for services is not limited to needy families, however, eligible participants in the JAG-LA Program shall be 15-21 years of age and must face at least two designated barriers to success that include economic, academic, personal, environmental, or work related barriers.

D. Services are considered non-assistance by the agency.

AUTHORITY NOTE: Promulgated in accordance with 42 USC 601 et seq.; R.S. 46:231 and R.S. 36:474; House Bill 1, 2007 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 33:2468 (November 2007).

Ann Silverberg Williamson  
Secretary

0711#081

**RULE**

**Department of Treasury**  
**Board of Trustees of the Louisiana**  
**State Employees' Retirement System**

Contributions by Electronic Funds Transfer  
or Certified Check (LAC 58:I.111)

The Department of the Treasury, Board of Trustees of the Louisiana State Employees' Retirement System ("LASERS") has adopted LAC 58:I.111, which allows LASERS to require that agencies remit employee and employer contributions by electronic funds transfer (EFT) or by certified check. It will help ensure that LASERS remains actuarially sound and safeguards prompt payments to members. The Rule complies with and is enabled by R.S. 11:515. No preamble for this Rule has been prepared.

**Title 58**  
**RETIREMENT**

**Part I. Louisiana State Employees' Retirement System**  
**Chapter 1. General Provisions**

**§111. Contributions by Electronic Funds Transfer or Certified Check**

A. Under circumstances as determined by the executive director, LASERS may require agencies to submit employee and employer contributions by electronic funds transfer ("EFT") or certified check.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 33:2468 (November 2007).

Cindy Rougeou  
Executive Director

0711#031

## RULE

### Department of Treasury Board of Trustees of the Louisiana State Employees' Retirement System

#### Spousal Consent (LAC 58:I.2901)

The Department of the Treasury, Board of Trustees of the Louisiana State Employees' Retirement System ("LASERS") has amended LAC 58:I.2901, which would allow members to obtain spousal consent to their selection of retirement options and DROP beneficiaries at any time prior to retirement. The Rule amendment complies with and is enabled by R.S. 11:446, R.S. 11:477 and R.S. 11:515. No preamble for this Rule amendment has been prepared.

#### Title 58

#### RETIREMENT

#### Part I. Louisiana State Employees' Retirement System Chapter 29. Spousal Consent

#### §2901. Spousal Consent to Retirement Option

A. If a member is married and wishes to elect to retire under either the maximum plan, Option I, or else choose from Options II, III or IV(B) while naming someone other than his spouse as his beneficiary, he must obtain the consent of his spouse in writing on a form provided by LASERS executed before a notary public.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:446, R.S. 11:477 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 33:2469 (November 2007).

Cindy Rougeou  
Executive Director

0711#030

## RULE

### Department of Wildlife and Fisheries Wildlife and Fisheries Commission

#### 2008 Turkey Season (LAC 76:XIX.113-117)

The Wildlife and Fisheries Commission does hereby amend the turkey rules and regulations for the 2008 season.

#### Title 76

#### WILDLIFE AND FISHERIES

#### Part XIX. Hunting and WMA Regulations

#### Chapter 1. Resident Game Hunting Season

#### §113. General and WMA Turkey Hunting Regulations

A. General Regulations. Only gobblers (male turkeys) may be taken. Taking of hen (female) turkeys, including bearded hens, is prohibited. Still hunting only. Use of dogs,

electronic calling devices and live decoys is illegal. Turkeys may be hunted with shotguns, including muzzleloading shotguns, using shot not larger than #2 lead or BB steel shot, and bow and arrow but by no other means. Shooting turkeys from a moving or stationary vehicle is prohibited. Shotguns capable of holding more than three shells prohibited. The running of coyote with dogs is prohibited in all turkey hunting areas during the open turkey season. No person shall hunt, trap or take turkeys by the aid of baiting or on or over any baited area. Baiting means placing, exposing, depositing or scattering of corn (shelled, shucked or unshucked), wheat or other grain, salt, or other feed so as to constitute a lure, attraction or enticement to, on or over any areas where hunters are attempting to take turkeys. A baited area is any area where corn (shelled, shucked or unshucked), wheat or other grain, salt, or other feed capable of luring, attracting or enticing turkeys is directly or indirectly placed, exposed, deposited, distributed or scattered. Such areas remain baited areas for 15 days following complete removal of all such corn, wheat or other grain, salt, or other feed. Wildlife agents are authorized to close such baited areas and to place signs in the immediate vicinity designating closed zones and dates of closures. No person hunting turkeys more than 200 yards from a baited area will be in violation of the turkey baiting regulation.

B. Tags. Hunters who received tags with their license are encouraged, but not required, to tag their kill and record their kill on their harvest report card. Hunters are also encouraged, but not required, to report their kill by using the kill validation web site or by calling the validation phone number.

C. Possession of Live Wild Turkeys. No person shall take live wild turkeys or their eggs from the wild. No person shall possess captive live wild turkeys, (*Meleagris gallopavo silvestris*, *M. g. osceola*, *M. g. intermedia*, *M. g. merriami*, *M. g. mexicana*) or their eggs, regardless of origin, without a valid game breeder license. No pen-raised turkeys from within or without the state shall be liberated (released) within the state.

D. Statewide Youth and Physically Challenged Season Regulations. Only youths younger than 16 years of age or hunters possessing a Physically Challenged Hunter Permit with wheelchair classification may hunt. Youth must possess a hunter safety certification or proof of successful completion of a hunter safety course. Each youth must be accompanied by one adult 18 years of age or older. If the accompanying adult is in possession of hunter safety certification, a valid hunting license or proof of successful completion of a hunter safety course, this requirement is waived for the youth. Adults accompanying youth may not possess a firearm or bow. Youths may possess only one firearm or bow while hunting. The supervising adult shall maintain visual and voice contact with the youth at all times. An adult may supervise only one youth during this special hunt. Only one gobbler per day may be taken and any gobbler taken by the hunter during this special season counts towards their season bag limit of 2.

#### E. WMA Turkey Hunting Regulations

1. WMAs with youth turkey hunts are closed to all activities except turkey hunting by authorized youth hunt participants and fishing on the day(s) of the youth hunt.

2. Self-Clearing Permits. All turkey hunts, including lottery hunts, are self-clearing. Hunters must check in daily by obtaining a permit from a self-clearing station prior to hunting. The self-clearing permit must be in the hunter's possession while hunting. Upon completion of each day's hunt, the hunter must check out by completing and depositing the hunter report portion of the permit in the check-out box at a self-clearing station before exiting the WMA.

3. Lottery Hunts. All or portions of some WMA seasons are designated as lottery hunts and are restricted to hunters selected by pre-application lottery. To apply for these lottery hunts, a hunter must submit a completed official application form to the Baton Rouge office by the deadline printed on the application. A non-refundable fee of \$5 must be sent with each application. Applicants for WMA youth hunts must be at least 8 years old on the day of the hunt. Applicants may submit only one application and may be selected for only one WMA Turkey Lottery Hunt annually. Submitting more than one application will result in disqualification. Hunters must abide by self-clearing permit requirements. Hunters chosen for WMA lottery hunts may be accompanied by one person. The person accompanying a lottery hunter shall not possess a firearm/bow or take a turkey, and must remain within a distance that allows normal voice contact with the lottery hunter at all times. Youths chosen for special youth only hunts will be guided by members of the Louisiana Chapter of the National Wild Turkey Federation. One person may accompany the youth and guide, but may not hunt.

4. WMA Physically Challenged Hunt (Wheelchair Confined). Open only to hunters with a Physically Challenged Hunter Permit with wheelchair classification. During this hunt, ATVs may be used by hunters on all designated ATV trails in accordance with the Physically Challenged Hunter Permit. Hunters must abide by self-clearing permit requirements.

5. Rules Specific to Certain WMAs

a. Bens Creek. No turkey hunting within 100 yards of food plots identified by two yellow paint rings around the nearest tree.

b. Sandy Hollow. No turkey hunting within 100 yards of food plots identified by two yellow paint rings around the nearest tree.

c. Sherburne. All turkeys taken must be checked at the WMA headquarters.

d. Tunica Hills (North Tract). Area closed to all users April 14-August 31.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:115.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 25:2263 (November 1999), amended LR 26:2634 (November 2000), LR 27:2270 (December 2001), LR 28:2375 (November 2002), LR 29:2512 (November 2003), LR 30:2874 (December 2004), LR 31:3167 (December 2005), LR 32:2272 (December 2006), LR 33:2469 (November 2007).

**§115. Turkey Hunting Areas, Seasons, and Bag Limits**

A. Shooting Hours. One-half hour before sunrise to one-half hour after sunset.

B. Daily limit is one gobbler. Season limit is two gobblers. Turkeys taken on WMAs are part of the season bag

limit. Only one turkey may be taken during WMA lottery hunts.

C. Turkey season will open in designated areas on the fourth Saturday in March. The Area A turkey season will be 30 consecutive days in length, the Area B turkey season will be 23 consecutive days in length, and the Area C turkey season will be 16 consecutive days in length. Wildlife Management Areas, National Forests, National Wildlife Refuges, and U.S. Army Corps of Engineers land may vary from this framework. Deviation from this framework may occur in those years when the fourth Saturday in March falls the day before Easter.

D. Statewide Youth Turkey and Physically Challenged Season on private lands shall be the weekend prior to the statewide turkey season.

E. Only those Wildlife Management Areas listed herein are open to turkey hunting. All other Wildlife Management Areas are closed.

F. 2008 Turkey Hunting Schedule

Area	Season Dates
A	March 21-April 20
B	March 21-April 13
C	March 21-April 6
Private Lands Youth and Physically Challenged Hunter (Wheelchair Confined) Hunt	March 15-16

G. 2008 Turkey Hunting Season—Open Only in the Following Areas

1. Area A

a. All of the following parishes are open:

- i. Beauregard;
- ii. Bienville;
- iii. Claiborne (Exception: See Federal Lands Hunting Schedule for Kisatchie National Forest dates);
- iv. East Baton Rouge;
- v. East Feliciana;
- vi. Grant (Exception: See Federal Lands Hunting Schedule for Kisatchie National Forest dates);
- vii. Jackson;
- viii. LaSalle;
- ix. Lincoln;
- x. Livingston;
- xi. Natchitoches (Exception: See Federal Lands Hunting Schedule for Kisatchie National Forest dates);
- xii. Rapides (Exception: See Federal Lands Hunting Schedule for Kisatchie National Forest dates);
- xiii. Sabine;
- xiv. St. Helena;
- xv. Tangipahoa;
- xvi. Union;
- xvii. Vernon (Exception: See Federal Lands Hunting Schedule for Kisatchie National Forest dates);
- xviii. West Baton Rouge;
- xix. West Feliciana (including Raccourci Island);
- xx. Winn (Exception: See Federal Lands Hunting Schedule for Kisatchie National Forest dates).

b. Portions of the following parishes are also open:

- i. Allen—North of LA 104, west of LA 26 south of junction of LA 104 to US 190, north of US 190 east of Kinder, west of US 165 south of Kinder;

ii. Avoyelles—That portion bounded on the east by the Atchafalaya River, on the north by Red River to the Brouillette Community, on the west by LA 452 from Brouillette to LA 1, on the south by LA 1, eastward to Hamburg, thence by the West Atchafalaya Basin Protection levee southward;

iii. Calcasieu—North of I-10;

iv. Caldwell—West of Ouachita River southward to Catahoula Parish line;

v. Catahoula—South and west of the Ouachita River from the Caldwell Parish line southward to LA 8 at Harrisonburg, north and west of LA 8 from Harrisonburg to the LaSalle Parish line. ALSO that portion lying east of LA 15;

vi. Evangeline—North and west of LA 115, north of LA 106 from St. Landry to LA 13, west of LA 13 from Pine Prairie to Mamou and north of LA 104 west of Mamou;

vii. Franklin—That portion lying east of LA 17 and east of LA 15 from its juncture with LA 17 at Winnsboro;

viii. Iberville—West of LA 1. Exception: see Sherburne WMA for special season dates on all state, federal and private lands within Sherburne boundaries;

ix. Jefferson Davis—North of US 190 from junction with LA 26 to Kinder, west of US 165 and north of I-10 west from junction of US 165;

x. Madison—That portion lying east of US 65 from East Carroll Parish line to US 80 and south of US 80. Also, all lands east of the main channel of the Mississippi River;

xi. Morehouse—West of US 165 from the Arkansas line to the junction of LA 140 at Bonita, north and west of LA 140 to junction of LA 830-4 (Cooper Lake Road), west of LA 830-4 to US 165 at Bastrop, south of US 165 to junction of LA 3051 (Grabault Road) south of LA 3051 to junction of LA 138, west of LA 138 to junction of LA 134, north of LA 134 to the Ouachita Parish line;

xii. Ouachita—East of LA 143 from Union Parish line to US 80 in West Monroe, north of US 80 to LA 139, west of LA 139 to the Morehouse Parish line;

xiii. Pointe Coupee—All of the parish except that portion bounded on the north by LA Hwy. 1, from Innis to the junction of LA Hwy 417, on the west by LA Hwy. 417 southward toward McCrea, on the south by LA Hwy. 417 from McCrea to its junction with Delhi Lane, then by Delhi Lane to LA Hwy. 418, then LA Hwy. 418 northward to LA Hwy. 1 at Innis. Exception: see Sherburne WMA for special season dates on all state, federal and private lands within Sherburne boundaries;

xiv. Richland—That portion south of US 80 and east of LA 17;

xv. St. Landry—That portion bounded on the west by the West Atchafalaya Basin Protection Levee and on the east by the Atchafalaya River. Exception: the Indian Bayou Area, see Federal Lands Hunting Schedule for Indian Bayou Area dates;

xvi. Upper St. Martin—All within the Atchafalaya Basin. Exceptions: Sherburne WMA and Indian Bayou Area, see WMA Turkey Hunting Schedule for special season dates on all state, federal and private lands within Sherburne WMA boundaries and see Federal Lands Hunting Schedule for Indian Bayou dates;

xvii. Tensas—That portion west of US 65 from the Concordia Parish line to its juncture with LA 128, north of LA 128 to St. Joseph; west and north of LA 605, 604 and 3078 northward to Port Gibson Ferry. Also all lands east of the main channel of the Mississippi River.

2. Area B

a. All of the following parishes are open:

- i. Caddo;
- ii. DeSoto;
- iii. Red River;
- iv. St. Tammany;
- v. Washington.

b. Portions of the following parishes are open:

- i. Ascension—All east of the Mississippi River;
- ii. Bossier—All open except that portion bounded on the north by I-20, on the west by LA 164, on the south by LA 164, and on the east by the Webster Parish Line;
- iii. East Carroll—East of US 65 from Arkansas state line to Madison Parish line;
- iv. Iberville—All east of the Mississippi River;
- v. Webster—All open except that portion bounded on the north by I-20, on the east by U.S. 371, on the south by LA 164, and on the west by the Bossier Parish line (Exception: See Federal Lands Hunting Schedule for Kisatchie National Forest dates).

3. Area C

a. All of the following parishes are open:

- i. Concordia.

b. Portions of the following parishes are open:

- i. Caldwell—All east of the Ouachita River;
- ii. Catahoula—All of the parish EXCEPT for that portion located in Area A;
- iii. Franklin—West of LA 17 from the Richland Parish line southward to Winnsboro, west of LA 15 southward to the Catahoula Parish line;
- iv. Richland—West of LA 17 from Franklin Parish line to Ringle Road, south of Ringle Road to Ferguson Road, south of Ferguson Road to Little Road, south of Little Road to Big Creek, east of Big Creek to Franklin Parish line;
- v. Tensas—East and south of US 65 from Concordia Parish line to LA 128, south of LA 128 to St. Joseph, east and south of LA 605, 604 and 3078 northward to Port Gibson Ferry.

H. Wildlife Management Area Turkey Hunting Schedule

WMA	Non-Lottery Hunt Dates	Lottery Hunt Dates
Bayou Macon	None	April 5-6
Bens Creek	March 21-April 6	None
Big Lake	March 21-April 6	None
Bodcau	March 21-April 6	None
Boeuf	March 21-30	None
Clear Creek	March 31-April 20	March 21-23 March 29-30
Camp Beauregard	March 21-30	None
Dewey Wills		April 12-13
Fort Polk	March 21-April 20	None
Grassy Lake	March 21-April 6	None
Hutchinson Creek	March 21-April 20	None
Jackson-Bienville	March 21-April 6	None
Lake Ramsey	March 21-April 6	None

WMA	Non-Lottery Hunt Dates	Lottery Hunt Dates
Little River	March 21-April 6	None
Loggy Bayou	None	April 12-13
Peason Ridge	March 21-April 20	None
Red River	March 21-April 6	None
Sabine	None	March 21-23 March 29-30
Sandy Hollow	March 21-April 6	None
Sherburne	March 27-30	March 21-23 March 24-26
Sicily Island	None	March 21-23 March 24-26 March 27-29 March 30-April 1 April 2-5
Tangipahoa Parish School Board	March 21-April 20	None
Three Rivers	March 21-April 6	None
Tunica Hills South Tract	April 7-13	March 21-22 March 29-30 April 5-6
Tunica Hills North Tract	April 7-13	March 21-22 March 29-30 April 5-6
Union	None	April 5-6
Walnut Hills	March 21-April 20	None
West Bay	None	March 21-23 March 29-30

#### I. Wildlife Management Area Lottery Youth Hunts

WMA	Lottery Youth Hunt Date
Bens Creek	March 15
Big Lake	March 15
Fort Polk/Peason Ridge/ Calcasieu Ranger Dist.	March 15
Jackson-Bienville	March 15
Loggy Bayou	April 5
Sherburne	March 15-16
Sicily Island	March 15
Spring Bayou	March 15
Thistlethwaite	April 5
Tunica Hills	March 15
Union	March 29
West Bay	March 15

#### J. Wildlife Management Area Physically Challenged (Wheelchair Confined) Hunt

1. Jackson-Bienville WMA will be open April 12-18 to holders of valid Physically Challenged Hunter (Wheelchair Classification) Permits.

#### K. Federal Lands Turkey Hunting Schedule

1. Kisatchie National Forest (KNF) Turkey Hunting Schedule. Caney Ranger District, March 21-April 6; all remaining KNF lands, March 21-April 13 (including Catahoula and Red Dirt National Wildlife Management Preserves).

2. U.S. Army Corps of Engineers Turkey Hunting Schedule. Indian Bayou Area, March 15-16 physically challenged lottery only hunt, lottery hunt only on March 21-23 and March 24-26, non-lottery hunt March 27-30. Old River Control and Lock Areas, March 21-April 6.

3. National Wildlife Refuges. Bogue Chitto NWR, March 21-April 13; Lake Ophelia NWR, March 21-April 3 hunt ends at 12:00 p.m. each day; Tensas NWR, March 15-16 (youth only), March 21-April 5; Upper Ouachita NWR, March 15 (youth lottery only).

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:115.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 25:2264 (November 1999), amended LR 26:2634 (November 2000), LR 27:2270 (December 2001), LR 28:2376 (November 2002), LR 29:2512 (November 2003), LR 30:2875 (December 2004), LR 31:3167 (December 2005), LR 32:2272 (December 2006), LR 33:2470 (November 2007).

#### §117. 2007 Wildlife Management Area Turkey— Hunting Regulations

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:115.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission LR 25:2265 (November 1999), amended LR 26:2636 (November 2000), LR 27:2272 (December 2001), LR 28:2377 (November 2002), LR 29:2514 (November 2003), LR 30:2876 (December 2004), LR 31:3169 (December 2005), LR 32:2274 (December 2006), repealed LR 33:2472 (November 2007).

Patrick C. Morrow  
Vice-Chairman

0711#046

# Notices of Intent

## NOTICE OF INTENT

Department of Agriculture and Forestry  
Office of Agro Consumer Services

Weights and Measures (LAC 7:XXXV.101 and 137)

The Commissioner of Agriculture and Forestry intends to adopt by reference that part of Handbook 130 issued by the National Institute of Standards and Technology entitled *Examination Procedure for Price Verification* and to adopt rules and regulations governing the sale or offer or exposure for sale of mulch. These regulations are being adopted in accordance with the Louisiana Administrative Procedure Act, (R.S. 49:950 et seq.). These rules are enabled by R.S. 3:4608 and R.S. 3:4613(C).

Handbook 130 establishes national recognized standards to be used in matters involving weights and measures. The part of Handbook 130 that is being adopted establishes standards governing the conduct of examinations to verify prices of goods offered for sale to consumers.

Mulch is primarily sold in terms of volume, such as cubic feet or yards, but there are no state or federal laws or regulations specifying the manner in which the volume of mulch sold or offered or exposed for sale is to be determined. Mulch, therefore, could be sold by methods that determine the volume of mulch based on weight. Usually, the method of determining volume based on weight is used to measure the volume of commodities where substantial change in density or weight can not be caused by external factors. Determining volume by weight, although not currently prohibited for determining the volume of mulch, has not been traditionally used in determining the volume of mulch and is generally frowned on in the industry.

Mulch is a commodity where substantial change in density or weight can be caused by external factors, such as water. Mulch sold after a major rain will weigh substantially more than mulch sold after a dry spell. A purchaser of mulch after a major rain, therefore, will receive less mulch by volume than a purchaser after a dry spell, if the volume is determined by weight. The determination of the volume of mulch by weight leaves consumers of this state subject to arbitrary reductions in the volume of mulch being purchased based on external factors. Such a determination also leaves consumers of this state open to fraud through the addition of water to mulch by unscrupulous vendors. The use of weight to determine the volume of mulch has, in fact, caused one or more lawsuits to be filed. The ultimate purchasers of mulch are generally household consumers who have little ability to determine if the measure of the mulch purchased is correct.

The Commissioner of Agriculture and Forestry has, therefore, determined that these rules and regulations are necessary in order to protect the public and to ensure that commodities are sold through the use of accurate weights and measures.

## Title 7

### AGRICULTURE AND ANIMALS

#### Part XXXV. Agro-Consumer Services

##### Chapter 1. Weights and Measures

##### §101. Specifications, Tolerances and Regulation for Commercial Weighing and Measuring Devices

A. All of Handbook H-44 issued by the National Institute of Standards and Technology entitled Specifications, Tolerances, and Regulations for Commercial Weighing and Measuring Devices is hereby adopted by reference.

B. That part of Handbook 130 issued by the National Institute of Standards and Technology entitled Examination Procedure for Price Verification is hereby adopted by reference.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:4606 and R.S. 3:4608.

HISTORICAL NOTE: Adopted by the Department of Agriculture, Commission of Weights and Measures, April 1953, promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Division of Weights and Measures, LR 19:1530 (December 1993), amended LR 23:857 (July 1997), amended by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Weights and Measures Commission, LR 24:1495 (August 1998), LR 34:

##### §137. Mulch; Definition; Sale by Volume; Prohibitions

A. Mulch is any product or material that is sold or offered or exposed for sale for primary use as a horticultural, aboveground dressing, for decoration, moisture control, weed control, erosion control, temperature control, or other similar purposes.

B. All mulch shall be sold or offered or exposed for sale in terms of volume measured by either the metric system or the inch-pound system.

1. If mulch is sold by the metric system, the volume of mulch shall be measured in terms of the cubic meter or liter.

2. If mulch is sold by the inch-pound unit the volume of mulch shall be measured in terms of the cubic yard or cubic foot.

C. Weight shall not be used in determining the volume of mulch being sold or offered or exposed for sale.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:4608 and R. S. 3:4613(C).

HISTORICAL NOTE: Adopted by the Department of Agriculture, Weights and Measures Commission LR 34:

##### Family Impact Statement

The proposed amendments to rules LAC:XXXV.101 and 137 governing the sale or offer or exposure for sale of mulch and to adopt by reference that part of Handbook 130 issued by the National Institute of Standards and Technology entitled *Examination Procedure for Price Verification* and should not have any known or foreseeable impact on any family as defined by R.S. 49:972 D or on family formation, stability and autonomy. Specifically there should be no known or foreseeable effect on:

1. the stability of the family;

2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of children;
6. the ability of the family or a local government to perform the function as contained in the proposed Rule.

Interested persons should submit written comments on the proposed Rule to Benjy Rayburn through December 27, 2007 at 5825 Florida Blvd., Baton Rouge, LA 70806. No preamble regarding this Rule is available.

Bob Odom  
Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Weights and Measures**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

There will be no implementation costs or savings to state or local governmental units.

The Department intends to adopt by reference that part of Handbook 130 issued by the National Institute of Standards and Technology entitled *Examination Procedure for Price Verification* and to adopt rules and regulations governing the sale or offer or exposure for sale of mulch.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There is estimated to be no effect on revenue collection of state or local governmental units.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

The only non-governmental groups that may be affected by this proposed action would be the purchasers of mulch. Purchasers of mulch would benefit from this proposed action due to the regulating of mulch by volume instead of weight. Mulch is a commodity where substantial change in density or weight can be caused by external factors, such as water. This proposed rule change ensures that commodities such as mulch are sold through the use of accurate weights and measures.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The proposed amendments are not anticipated to have an effect on competition and employment.

Skip Rhorer  
Assistant Commissioner  
0711#038

Robert E. Hosse  
Staff Director  
Legislative Fiscal Officer

**NOTICE OF INTENT**

**Department of Civil Service  
Civil Service Commission**

**Non-Disciplinary Removals**

Pursuant to Article X, Section 10 of the State Constitution, notice is hereby given that the State Civil Service Commission proposes to amend Civil Service Rule 12.6 governing non-disciplinary removals.

**Chapter 12. Adverse Actions, Investigations and Resignations**

**12.6. Non-Disciplinary Removals**

(a) An employee may be non-disciplinarily removed under the following circumstances:

1. When, on the date the notice required by Rule 12.7 is mailed, hand delivered, or orally given, the employee is unable to perform the essential functions of his job due to illness or medical disability and has fewer than eight hours of sick leave. An employee removed under this provision shall be paid for all remaining sick leave.

2. When, after the employee has been given written notice that his attendance requires improvement and a copy of this Rule, an employee has seven or more unscheduled absences during any consecutive 26 week period. The employee shall also be given written notice each time he incurs a sixth unscheduled absence during a consecutive 26 week period. An unscheduled absence occurs when an employee is absent from work without having obtained approved leave prior to the absence. Approval of leave, after the fact, to cover an unscheduled absence shall not prevent the absence from being considered unscheduled. A continuous absence for the same reason is one unscheduled absence, regardless of its duration.

3. When, as a result of conduct that was not work related, the employee fails to obtain or loses a license, commission, certificate or other accreditation that is legally required for the job.

4. When the employee holds more than one position in the state service and the multiple employment causes an employing agency to be liable for overtime payments under the Fair Labor Standards Act and, after having been provided an opportunity to do so, the employee has refused to resign from one of the positions.

5. When there is cause for dismissal, but the cause is not the employee's fault.

(b) When an employee is removed under this Rule, the adverse consequences of Rules 6.5(c); 7.5(a); 8.9(d); 8.13(a); 8.15(d); 8.18(d) and (e); 11.18(b) and 17.25(e) shall not apply.

**AUTHORITY NOTE:** Promulgated in accordance with La. Const. Art. X, Sec 10

**HISTORICAL NOTE:** Enacted by the State Civil Service Commission as Civil Service Rule 12.10 effective March 15, 1966; amended effective March 15, 1973; amended and re-enacted as Civil Service Rule 12.6 effective August 5, 1992 (LR 18:6); amended July 11, 2001 (LR 27:6); amended January 9, 2002 (LR 27:12).

**Family Impact Statement**

Implementation of this proposed Rule will have no effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of children;
6. the ability of the family or a local government to perform this function.

Interested persons may submit comments in writing to the Director of the Department of State Civil Service at P.O. Box 94111 Baton Rouge, LA 70804-9111 or by fax to (225) 342-8058. All written comments must be submitted by 4:30 p.m., Tuesday, December 11, 2007. A public hearing will be held on Wednesday, December 12, 2007, at 9 a.m. in Room 1-100, Claiborne Building, 1201 North Third Street, Baton Rouge, LA.

Anne Smith Soileau  
Director

0711#053

## NOTICE OF INTENT

### Board of Elementary and Secondary Education

Board of Elementary and Secondary Education  
(LAC 28:I.Chapters 1-13)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education approved for advertisement revisions to the Louisiana Administrative Code, Title 28, Part I. This document is the code of conduct for the Board of Elementary and Secondary Education and replaces any previously advertised versions. All other policies previously contained in this document have either been rescinded and/or appropriately assigned to other bulletins containing rules affecting agencies external to BESE.

#### Title 28 EDUCATION

#### Part I. Board of Elementary and Secondary Education

#### Chapter 1. General Provisions

#### §101. Purpose

A. These rules and any amendment adopted in conformity with these provisions shall govern the operating procedures of the Board of Elementary and Secondary Education (BESE), its officers and staff, its committees and advisory councils, and the State Superintendent of Education of the Louisiana Department of Education (LDE).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

#### §103. Definitions

*BESE* and/or *Board*—the Board of Elementary and Secondary Education as created by the Louisiana Constitution and the Louisiana Revised Statutes.

*Constitution*—the Constitution of the State of Louisiana.

*Department of Education, Department, or LDE*—the Louisiana Department of Education, the administrative arm of the Board of Elementary and Secondary Education.

*House*—the Louisiana House of Representatives.

*Senate*—the Louisiana Senate.

*State Superintendent*—the Superintendent of Education, who shall be the chief administrative officer of the Louisiana Department of Education and shall administer, coordinate, and supervise the activities of the department in accordance with law, regulation, and policy.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

#### §105. Effective Period

A. These rules shall take effect upon final adoption by the board and in accordance with the Administrative Procedure Act (APA). These rules shall expire upon adoption of other rules by the board in accordance with the APA.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:951 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

#### Chapter 3. Composition and General Authority

#### §301. Creation

A. The Board of Elementary and Secondary Education is created as a body corporate. It shall supervise and control the public elementary and secondary schools and special schools under its jurisdiction and shall have budgetary responsibility of all funds appropriated or allocated by the state for those schools, all as provided by law. The board shall have other powers, duties, and responsibilities as provided by the Louisiana Constitution or by law, but shall have no control over the business affairs of a city, parish, or other local public school board or the selection or removal of its officers and employees; however, in accordance with law, the board shall have the power to supervise, manage, and operate or provide for the supervision, management, and operation of a public elementary or secondary school which has been determined to be failing, including the power to receive, control, and expend state funds appropriated and allocated pursuant to Louisiana Constitution, Article VIII, §13, any local contribution required by Article VIII, §13, and any other local revenue available to a school board with responsibility for a school determined to be failing in amounts that are calculated based on the number of students in attendance in such a school, all in the manner provided by and in accordance with law.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 3.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

#### §303. Membership and Terms

A. The board shall consist of 11 members. One member shall be a resident of and shall be elected by the electors of each of the BESE districts. With consent of the senate, three members shall be appointed by the governor from the state at large. Members shall serve terms of four years, which shall be concurrent with the term of the governor. Members shall serve until their successors are selected and take office.

B. A vacancy in the office of an elected member, if the remaining portion of the term is more than one year, shall be filled for the remainder of the term by election, as provided by law. Other vacancies shall be filled for the remainder of the term by appointment by the governor.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 3; R.S. 17:1; and R.S. 17:2.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

#### §305. Election of Officers and Their Duties

A. The board shall elect a president, a vice-president, and a secretary-treasurer from its membership whose terms of office are fixed by the board, not to exceed one year. These officers shall assume their duties at the board meeting immediately following their election.

B. The president shall conduct board meetings and perform duties designated by the board or by statute. The

president shall sign, on behalf of the board, contracts, agreements, and/or official documents approved by the board. The president is authorized to make ad hoc decisions for the board in emergency situations when the board is not in regular or special session and where policies and statutes are silent. However, any such decisions, which constitute an obligation, official position, or action of the board, are subject to ratification by the board at the next scheduled meeting. The president shall appoint members of standing and special committees of the board.

C. The vice-president shall preside at board meetings in the absence of or at the request of the president and shall perform any other duties specifically assigned by the board and any other such duties as requested by the president.

D. The secretary-treasurer shall preside at board meetings in the absence of both the president and the vice-president and shall perform any other duties specifically assigned by the board and any other duties as requested by the president.

E. The state superintendent shall serve as ex officio secretary of the board. As ex officio secretary, he/she shall have powers and functions assigned by the board, among which shall be the authority with the president of the board, to authenticate and verify official documents of the board and to submit agenda items for consideration by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3 and R.S. 17:22.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

### **§307. General Powers and Duties**

A. The board exercises its supervision and control over the public elementary and secondary schools and special schools under its jurisdiction, and exercises its budgetary responsibility for all funds appropriated or allocated by the state for public elementary, secondary, and special schools placed under its jurisdiction, through general powers and duties that shall include, but not be limited to, the following.

1. Adopt a minimum foundation program and adopt a formula for the equitable allocation of minimum foundation funds to city, parish, or other local public school systems. The board shall adopt such program and formula for each ensuing fiscal year in a timely manner so that the program and formula may be submitted to the Joint Legislative Committee on the Budget in accordance with R.S. 17:22(2)(d).

2. Exercise budgetary responsibility and allocate for expenditure by the schools and programs under its jurisdiction all monies appropriated or otherwise made available for purposes of the board and of such schools and programs.

3. Supervise, manage, and operate or provide for the supervision, management, and operation of a public elementary or secondary school which has been determined to be failing, including the power to receive, control, and expend state funds appropriated and allocated pursuant to La. Const. art. VIII, sec. 13(B), any local contribution required by La. Const. art. VIII, sec. 13, and any other local revenue available to a school board with responsibility for a school determined to be failing in amounts that are calculated based on the number of students in attendance in such a school, all in the manner provided by and in accordance with law.

4. Approve the administration of the Special School District and the Recovery School District by the department.

5. Approve budgets of the department, including the Special School District and Recovery School District, and all entities under the jurisdiction the board, including the BESE Special Schools, as provided herein.

6. Prescribe and adopt free school books and other materials of instruction for the children of this state at the elementary and secondary levels and all other schools and programs under its jurisdiction for which the legislature provides funds, in accordance with law.

7. Adopt or approve courses of study and rules, by-laws, and regulations for the discipline of students and for the governance of the public elementary and secondary schools and other public schools and programs under its jurisdiction, which shall not be inconsistent with law and which shall be enforced by the city, parish, or other local public school boards and the city, parish, or other local public school superintendents.

8. Prescribe the qualifications and provide for the certification of teachers in accordance with applicable law, which qualifications and requirements shall be such as to insure that certification shall be a reliable indicator of the minimum current ability and proficiency of the teacher to educate at the grade level and in the subject(s) to which the teacher is assigned.

9. Adopt minimum standards for the approval of each public elementary and secondary school and special school in the state under its jurisdiction.

10. Except as otherwise provided by law, approve private schools in accordance with the provisions of R.S. 17:10 and other applicable laws.

11. Exercise supervision and control over the state's special schools: the Louisiana School for the Visually Impaired, the Louisiana School for the Deaf, and the Louisiana Special Education Center.

12. Exercise approval authority over the administration of the Special School District by the department pursuant to law.

13. Issue diplomas for successful completion of programs of study.

14. Exercise approval authority over the administration of the Recovery School District by the department pursuant to law.

15. Authorize the operation of Type 2, Type 4, and Type 5 charter schools and provide oversight through the department of Type 2, Type 4, and Type 5 charter schools.

a. Review each proposed charter in a timely manner and determine whether each proposed charter complies with the law and rules and whether the proposal is valid, complete, financially well-structured, educationally sound, and whether it offers potential for fulfilling the purposes of the charter school law.

b. Enter into any proposed charter that complies with the Charter School Law and policy upon a determination that the charter is a valid, complete, financially well-structured, and educationally sound proposal that offers potential for fulfilling the purposes of the charter school law.

c. Determine the policy and provide direction to the department for providing the oversight of the operation of charter schools chartered with the board.

16. Adopt, amend, or repeal rules, regulations, and policies necessary or proper for the conduct of the business of the board.

AUTHORITY NOTE: Promulgated in accordance with La. Const. art. VIII § 8, R.S. 17:6(A), R.S.17:7(2)(a), R.S. 17:7(3), R.S. 17:7(4), R.S. 17:7(5), R.S. 17:7(6) (a) (i), R.S. 17:7(7), R.S. 17:7(8), R.S. 17:4.1, R.S. 17:43, R.S. 17:348, R.S. 17:1951, R.S. 17:6(A)(10), R.S. 17:6(A)(11), R.S. 17:10.5, R.S. 17:1951, R.S. 17:1990 and R.S. 17:3981.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

### **§309. State Superintendent**

#### **A. Appointment**

1. The state superintendent shall be appointed by a two-thirds vote of the total membership of the board, subject to confirmation by the senate.

2. The board shall enter into a contract with the state superintendent that delineates the terms and conditions of employment. The length of the contract shall be determined by the board but may not extend past the end of the term of office of the board members making the appointment, except that the contract may provide that the state superintendent may serve until the succeeding board has made an appointment.

3. Any vacancy in the office of the state superintendent which occurs prior to the expiration of the term of his/her contract shall be filled for the remainder of the unexpired term by the method of appointment provided herein.

4. The board shall delegate to the state superintendent such of its powers and duties as it deems appropriate to aid the state superintendent in the efficient administration of his/her responsibility for the implementation of the policies of the board.

**B. Qualifications.** The state superintendent shall possess the following qualifications.

#### **1. General:**

- a. advanced degree in public administration, education, or related area;
- b. background in the formulation and implementation of public policy; and
- c. strong academic background.

#### **2. Experience:**

- a. proven record of success in administration;
- b. demonstrated ability to achieve positive results;
- c. credibility in his/her current profession; and
- d. proven record of team building.

#### **3. Professional skills:**

- a. proven decision-making skills;
- b. proven leadership skills;
- c. ability to work effectively with the legislature and executive branches of the government, education, business, and civic organizations; and
- d. outstanding interpersonal and communication skills.

**C. Compensation.** The annual salary of the state superintendent shall be set by the board subject to the approval of the Joint Legislative Committee on the Budget.

#### **D. General Authority**

1. The state superintendent shall execute and implement those educational policies and programs which are under the supervision and control of the board and shall serve as the administrative head of the department.

2. The state superintendent shall have such other powers, functions, duties, and responsibilities as may be provided by law, regulation, and policy.

3. The state superintendent shall administer the Recovery School District, an intermediate education unit within the department, pursuant to R.S. 17:1990. As the administrative head of the department, the state superintendent is the appointing authority for the Recovery School District, except as provided herein.

4. The state superintendent shall administer the Special School District, an educational service agency within the department, pursuant to R.S. 17:1951. As the administrative head of the department, the state superintendent is the appointing authority for the Special School District, except as provided herein.

5. The state superintendent shall supervise and oversee the administration of the BESE Special Schools. The state superintendent shall be the appointing authority for the BESE Special Schools, except as provided herein. The state superintendent shall have budgetary responsibilities over the BESE Special Schools.

6. The state superintendent may delegate, subject to the approval of the board, the appointing authority conferred upon him/her herein as to the BESE Special Schools and by law as to the Special School District to directors of the BESE Special Schools and the Special School District State Director, respectively. The state superintendent may delegate operational authority conferred upon him/her herein as to the BESE Special Schools and administrative authority conferred upon him/her by law as to the Special School District to the Special School District State Director, subject to any restrictions provided by law.

7. The state superintendent may delegate, subject to the approval of the board, the appointing authority conferred upon him/her by law as to the Recovery School District to the Recovery School District superintendent. The state superintendent may delegate administrative authority conferred upon him/her by law as to the Recovery School District to the Recovery School District superintendent, subject to any restrictions provided by law, rule, or policy.

#### **E. Duties**

1. The state superintendent shall establish such divisions within the department as are necessary or appropriate to carry out the functions vested by or under authority of the constitution and laws.

2. The state superintendent shall have budgetary responsibility for all funds appropriated or allocated by the state for the day-to-day operations and for the functions of the department, which are not inconsistent with the functions of the board.

3. The state superintendent, as the administrative head of the department, shall oversee the administration and distribution of all federal funds received for the benefit of those phases of education under the jurisdiction of the board, in accordance with policies adopted by the board.

4. The state superintendent may review the responsibilities of the department and prepare a plan to restructure and reorganize the department subject to the approval of the board and in accordance with Chapter 15 of Title 36 of the Louisiana Revised Statutes.

5. The state superintendent shall provide staff services within the department that are needed by the board to carry out its constitutional and statutory mandates.

6. The state superintendent shall exercise his/her responsibilities for personnel appointments in the following manner.

a. The state superintendent, with the consent of the board, may establish or abolish positions that direct the divisions of the department.

b. The state superintendent shall make appointments to senior departmental positions. Senior departmental positions are unclassified positions that compose the superintendent's cabinet and any other senior unclassified position so designated by the state superintendent. Unless otherwise provided herein or in other administrative manuals approved by the board, employees holding such positions shall serve at the pleasure of the state superintendent, in accordance with the law.

c. The state superintendent shall appoint the Recovery School District superintendent with prior approval of the board. The board president shall be notified of any acting appointments taking effect and the board shall be notified of the acting appointment at its next regularly scheduled meeting. Upon appointment approval by the board, the employment of the Recovery School District superintendent will continue unless he/she is removed by the board upon recommendation of the state superintendent or upon voluntary separation from employment.

d. The appointment and termination of the position of director of a BESE Special School and the Special School District State Director shall be governed by the *Personnel and Administrative Manual of the Special School District and Board of Elementary and Secondary Education (BESE) Special Schools*.

e. The state superintendent shall employ/appoint and fix the salaries and duties of employees of the department, including the Special School District and the Recovery School District, subject to applicable Civil Service laws, rules, and regulations, and other applicable laws, rules, regulations, and policies.

f. The state superintendent shall employ/appoint and fix the salaries and duties of employees of the BESE Special Schools, subject to applicable Civil Service laws, rules, and regulations, and other applicable laws, rules, regulations, and policies.

g. The selection of appointees to all unclassified positions shall be based on professional, technical, and/or clerical qualifications appropriate to each position.

h. No person shall, on the basis of race, color, religion, sex, age, national origin, handicap, veteran status, or any other non-merit factor, be discriminated against in any employment practice.

i. A monthly report on all new appointments and terminations shall be provided to members of the board.

j. In addition to the above, the state superintendent shall exercise his/her responsibilities for personnel matters in accordance with the constitution and laws of the state.

7. The state superintendent's responsibilities with respect to local education agencies shall include, but not be limited to:

a. Pursuant to the rules, regulations, and policies adopted by the board, the state superintendent shall offer assistance to local public school officials and the elementary and secondary schools of the state in their efforts to adopt procedures by which:

i. courses of study prescribed by the board will be followed,

ii. teachers will meet the standards prescribed by the board, and

iii. schools will meet the standards for approval, which are prescribed by law or by the board.

b. The state superintendent shall assist the local education agencies and teachers in securing the best possible results from their efforts.

c. The state superintendent shall prescribe the manner and substance of classifications for program cost accounting to be used by local education agencies in the preparation and adoption of annual budgets.

d. The state superintendent shall receive the annual budget of each local education agency and may require the local education agency to operate the schools within the receipts normally expected and set up in the school system budget. This shall include the right to advise school boards participating in the state equalization fund in all matters relating to the preparation and adoption of their budgets and the right to require change when it is clearly evident that the budget fails to comply with the intent and purpose of the state equalization fund.

e. The state superintendent shall receive the annual financial report submitted by local education agencies, as required by law, regulation, or policy.

f. The state superintendent shall identify local school systems as being "academically in crisis" and notify appropriate officials, as provided by law.

8. The state superintendent shall make recommendations to the board for the approval of Type 5 charter schools, subject to the policies and processes approved by the board.

9. The state superintendent shall periodically inform the board of areas in which policy development is needed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:21(C), R.S. 17:23(B), R.S. 17:6(B), R.S. 17:21(B), R.S. 17:21(D), R.S. 17:21(A), R.S. 17:1990, R.S. 17:1951, R.S. 17:24(A), R.S. 17:24(B), R.S. 17:24(C), R.S. 17:24(D), R.S. 17:22(2)(f), R.S. 36:645, R.S. 17:22(6), R.S. 17:88(B), R.S. 17:88(D), R.S. 17:92, R.S. 17:10.6(A)(2) and R.S. 17:3983.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

### **§311. The BESE Special Schools and the Special School District**

A. Functions of the BESE Special Schools and the Special School District

1. BESE Special Schools

a. The BESE Special Schools (Louisiana School for the Deaf, Louisiana School for the Visually Impaired, and Louisiana Special Education Center) are state-operated schools providing educational programs and services for residential and/or day students. The BESE Special Schools are established to provide a free appropriate public education for children with low incidence disabilities who meet the

admission criteria (i.e., deaf, blind, orthopedically impaired) for each such special school and who are enrolled in such special school.

## 2. Special School District

a. The Special School District is an educational service agency administered by the department with the approval of the board. The district provides educational services to students enrolled in state approved programs in non-traditional settings such as those provided by the Office of Citizens with Developmental Disabilities, the Office of Mental Health, the Office of Youth Development, and the Department of Public Safety and Corrections.

### B. Organization and Administration

1. The board delegates to the state superintendent the supervision of the administration of the BESE Special Schools according to policies prescribed by the board. The board shall oversee the administration of the Special School District, with such administration subject to board approval through the policies it prescribes.

2. The overall administrative organization of the Special School District and the BESE Special Schools consists of a governing board, which is the Board of Elementary and Secondary Education, and a chief state school officer who is the State Superintendent of Education, a Special School District State Director, and the BESE Special School directors.

3. The Special School District shall be administered by a state director, who shall report to the state superintendent. The authority, responsibilities, and duties of the state director shall be prescribed by board policy.

4. Each BESE Special School shall be administered by a director, who shall report to the state superintendent and, if authorized by the state superintendent, to the Special School District State Director. The authority, responsibilities, and duties of the directors of the BESE Special Schools shall be prescribed by board policy.

### C. School and District Policies and Procedures

1. Policies and procedures adopted by BESE for the governance of the BESE Special Schools and the Special School District are set forth in the *Personnel and Administrative Manual of the Special School District and the Board of Elementary and Secondary Education (BESE) Special Schools*. Other regulations approved by BESE are applicable where appropriate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:4.1, R.S. 17:1951, and R.S. 17:6(B).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

## §313. The Recovery School District

A. Functions and Jurisdiction of the Recovery School District

1. The Recovery School District is established as an intermediate educational unit administered by the department, subject to the approval of the board, to provide an appropriate education for children attending any public elementary or secondary school operated under the jurisdiction and direction of any city, parish, or other local public school board or any other public entity, which has been transferred to its jurisdiction pursuant to R.S. 17:10.5 or 10.7.

a. Public Schools Transferred Pursuant to R.S. 17:10.5

i. Pursuant to R.S. 17:10.5, a public school identified as academically unacceptable under the board's uniform statewide program of school accountability is designated as a failed school and may be transferred, with the approval of the board, to the Recovery School District when a city, parish, or other local public school board or other public entity:

(a) fails to present a plan to the board to reconstitute a failed school, as required pursuant to the uniform statewide program of school accountability; or

(b) presents a reconstitution plan that is unacceptable to the board; or

(c) fails at any time to comply with the terms of the reconstitution plan approved by the board; or

(d) the school has been labeled an academically unacceptable school for four consecutive years.

ii. The Recovery School District shall retain jurisdiction over any school transferred pursuant to R.S. 17:10.5 until the board, upon the recommendation of the department, enters into an agreement with the city, parish, or other local public school board or any other public entity from which the school was transferred for its return to the jurisdiction of such school board or public entity. When a school in the Recovery School District is no longer academically unacceptable, the board shall require the department to seek agreement for the return of the school. Such agreement shall include all of the following.

(a) Details for the operation of the school by the city, parish, or other local public school board or any other public entity, including provisions for the continuation of the programs that have provided the basis for the academic achievement by the students.

(b) Provisions providing for the employment status of all persons employed by the district or the operator of the school who were not employed by the prior system at the time the school was transferred to the jurisdiction of the district.

(c) Provisions for the means and timetable for the school's transition and return to the jurisdiction of the school board or other public entity.

iii. When a school transferred to the jurisdiction of the Recovery School District has been operating for four years pursuant to arrangements established by the Recovery School District, and has failed to improve sufficiently to no longer be academically unacceptable, the board shall take any one of the following actions.

(a) Revoke all school approval.

(b) Require the Recovery School District to terminate the operational arrangement and provide a different operational arrangement.

(c) Return the school to the jurisdiction of the city, parish, or other local public school board or other public entity from which it was transferred.

iv. A school transferred to the jurisdiction of the Recovery School District may remain under its jurisdiction if it continues to be labeled as academically unacceptable if the performance of the school as measured by a school performance score pursuant to the statewide program of school accountability has improved by at least 20 points during the initial and subsequent four-year periods.

v. The Recovery School District shall have the right to use any school building and all facilities and property otherwise part of the school and recognized as part of the facilities or assets of the schools prior to its placement in the Recovery School District and shall have access to such additional facilities as are typically available to the school, its students, and faculty and staff prior to its placement in the Recovery School District. Such use shall be unrestricted, except that the Recovery School District shall be responsible for and obligated to provide for routine maintenance and repair such that the facilities and property are maintained in as good an order as when the right of use was acquired by the district. There shall be no requirement for the Recovery School District to provide for the type of extensive repair to buildings or facilities that would be considered to be a capital expense. Such extensive repairs shall be provided by the governing authority of the city, parish, or other local public school system or other public entity which is responsible for the facility.

b. Public Schools Transferred Pursuant to R.S. 17:10.7

i. Pursuant to R.S. 17:10.7, each elementary and secondary school that has a baseline school performance score below the state average and that is a school in or granted by a city, parish, or other local public school system that has been declared to be academically in crisis pursuant to R.S. 17:10.6, and has at least one school eligible to transfer to the Recovery School District pursuant to R.S. 17:10.5, shall be designated a failing school and shall be transferred to the jurisdiction of the Recovery School District.

ii. No additional schools shall be transferred to the Recovery School District pursuant to R.S. 17:10.7 on or after November 15, 2008.

iii. The Recovery School District shall retain jurisdiction over any school transferred to it pursuant to R.S. 17:10.7 for a period of not less than five school years not including the school year in which the transfer occurred if the transfer occurred during a school year.

(a). The Recovery School District shall make a report to the board no later than nine months prior to the expiration of the five-year period.

(b). The report shall include at a minimum each of the following elements:

(i). the status of each school transferred, the nature of its faculty and administration, the demographics and size of its student body, its organizational and management structure, whether there has been improvement in student academic performance and, if so, how much and, if not, why not;

(ii). a recommendation as to whether the school should be:

[a]. continued in the Recovery School District pursuant to its reported operational status;

[b]. continued in the Recovery School District with a change in its operational status and the nature of the recommended change;

[c]. closed and the reasons therefor;

[d]. returned to the administration and management of the transferring system with proposed stipulations and conditions for the return.

(c). The board shall take action on the recommendations of the Recovery School District no later than six months prior to the expiration of the five-year period. Any action that results in an affirmative agreement to maintain the school in the Recovery School District shall retain the school in the district for an additional five-year period, unless a lesser time is adopted by the board.

iv. The Recovery School District may, at the discretion of the department, acquire with the transfer of the schools all the rights and responsibilities of ownership regarding all land, buildings, facilities, and other property that is part of the school being transferred, except that the Recovery School District may not transfer the ownership of the land or usable buildings constructed on the land to another, except as provided by law, save returning the land and such buildings to the stewardship of the prior system. The district may lease land or property, dispose of property other than the land as is necessary to properly manage the operation of the schools, rebuild school buildings, or renovate school buildings.

B. Authority of the Recovery School District

1. The Recovery School District shall have the authority to operate a school transferred to its jurisdiction in whatever manner is determined by the department to be most likely to bring the school to an acceptable level of performance as determined pursuant to the state accountability plan as provided by law and policy.

2. The Recovery School District shall have jurisdiction over Type 5 charter schools as provided by law and policy, including but not limited to the RSD Bulletin and the Charter School Bulletin.

3. The Recovery School District, as an intermediate educational unit, shall have the authority to seek, expend, manage, and retain federal funding and grant funding and to otherwise seek, obtain, expend, manage, and retain funding with all the same authority of any city, parish, or other local public school board or other public entity operating a public school, including the right to maintain and manage fund balances as provided by law and policy.

4. The Recovery School District shall have the authority to supervise, manage, and operate or to provide for the supervision, management, and operation of a school placed under its jurisdiction and to receive, control, and expend the local, state, and federal funding attributable to that school, with all the same power and authority as the prior system from which it was transferred subject to the requirements of R.S. 17:1990, 17:10.5 or 17:10.7, or with any other power and authority otherwise granted to the district as provided by law and policy.

5. The Recovery School District, in the exercise of its option to acquire the rights and responsibilities of ownership of schools transferred to its jurisdiction pursuant to R.S. 17:10.7, shall, through the department, be the exclusive authority to receive, manage, and expend any and all state, local, or federal funding dedicated to or available for the purpose of repairing, renovating, or rebuilding, or building a school building or facility, and any and all insurance proceeds attributable to damage done to any property, except that portion of such insurance proceeds used to pay debt owed by the prior system as provided by law and policy. A portion of all revenues available to the prior system which

are dedicated to the repair, maintenance, or capital projects regarding a transferred school whether such revenue is available from tax proceeds, was borrowed, bonded, or was otherwise acquired shall be transferred by the system to the Recovery School District in an amount equal to the proportion that the number of schools transferred from such school system bears to the total number of schools operated by the school system during the school year immediately preceding the school year in which the transfer occurred as provided by law and policy.

C. Organization and Administration of the Recovery School District

1. The Recovery School District shall be administered by the department, subject to the approval of the board.

2. The board shall oversee the administration of the Recovery School District, with such administration subject to board approval through the policies it prescribes.

3. The overall administrative organization of the Recovery School District consists of the board in the exercise of its approval over the administration of the Recovery School District, the state superintendent acting as the Recovery School District's governing authority consistent with authority delegated by the board and statutory authority acknowledged by the board, and a superintendent of the Recovery School District.

4. The Recovery School District shall be administered by a superintendent, who shall report to the state superintendent. The responsibilities and duties of the Recovery School District superintendent shall be prescribed by the state superintendent.

D. Policies and Procedures for the Recovery School District

1. Policies for the board's administrative oversight of the Recovery School District shall be adopted by BESE and set forth in the *Recovery School District Bulletin*. Administrative oversight shall include, but not be limited to, policy governing activities that will ensure the purpose and functions of the Recovery School District are being achieved, fiscal responsibilities are being met, community involvement is sought, property is managed and developed under uniform and established guidelines, student progress is measured and corrective action is taken, when necessary, district progress is measured in all essential areas and corrective action is taken, when necessary, reporting and planning measures are defined, compliance with law and board policy exists, charter school oversight exists, and the Recovery School District Plan is being fulfilled.

2. Procedures for the operation of the schools within the Recovery School District addressing the day-to-day operation of schools by the Recovery School District shall be adopted by the state superintendent and set forth in the *Recovery School District Handbook* and supplements thereto. The state superintendent shall report on such procedures adopted, as required by the board. The board shall have the authority to review and provide guidance on procedures adopted by the superintendent and shall have the authority to direct the amendment of a procedure the board determines is in violation of law or policy. Operational procedures shall include, but not be limited to, instructional program; human resource and employment policies; rules governing student conduct, rights, and responsibilities; fiscal management; business management; school facility use and maintenance;

district and student records; public and educational agency relations; and any procedure required by the RSD Bulletin.

3. The Recovery School District shall be subject to a *BESE Charter School Bulletin* to the extent that it is applicable to the charter schools under its jurisdiction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:6(B), R.S. 17:10.5, R.S. 17:10.6, R.S. 17:1990, R.S. 17:3973 and R.S. 36:651(F).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

**§315. Board Staff**

A. The board shall employ staff to discharge the constitutional and statutory functions of the board as policymaker for elementary and secondary education.

B. The executive director shall be selected and appointed by the board and shall serve as the agency head responsible for all administrative and fiscal operations of the board.

C. The executive director shall appoint unclassified administrative staff and submit such appointments to the board for ratification.

D. Classified staff are hired by the executive director in accordance with procedures approved by the Louisiana Department of Civil Service.

E. In general, duties of the staff include the following:

1. provide professional staffing functions for all standing/special committees of the board, including the appellate functions related to the quasi-judicial actions of the board acting as the administrative agency of last resort prior to regular judicial proceedings;

2. assist in the policymaking functions; the formulation and maintenance of regulating bulletins and rules;

3. answer inquiries (verbal and written) from and for board members;

4. provide staffing services to advisory councils appointed by the board and educational commissions established by the legislature. The board staff shall serve as secretariat to the advisory councils of the board. Secretarial services shall include the preparation of agenda and minutes, both of which shall be prepared according to regular office procedures of the board. The executive director shall supply each advisory council with a staff person who shall serve as an aide to the chair of the council and serve as a representative of the executive director for the purpose of coordinating activities of the advisory councils and the standing and special committees of the board;

5. provide necessary support services for BESE in its joint functions with the Board of Regents;

6. staff all board meetings and maintain official records and notifications of board action;

7. provide oversight for the distribution and monitoring of 8(g) funded programs;

8. develop charter school policy and monitor the department's implementation of policy and its oversight of the charter schools authorized by BESE;

9. testify at legislative hearings, as appropriate; and

10. provide any additional support services deemed necessary for the board to perform its constitutional and statutory duties.

F. Staff assistance from employees of the department may be secured for advisory councils only at the direction of the State Superintendent of Education.

G. All persons subject to the jurisdiction of the board who sign checks shall be bonded.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(15), R.S. 17:6(A)(10), R.S. 17:3(D), Article VII § 10.1, R.S. 17:3801, and R.S. 17:3981.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

## **Chapter 5. Organization**

### **§501. Standing and Special Committees**

A. As a means of assisting the board in the exercise of its powers and responsibilities as defined in the constitution and by law, standing and special committees are created.

B. Standing committees, composed of not less than three members of the board and appointed by the president, are:

1. 8(g) Committee. Charge: to allocate funds to any or all constitutional categories to enhance elementary and secondary education; to consider all administrative matters of the 8(g) program; to establish expectations of academic excellence and require accountability of performance; and to organize issues-related information to guide board decisions.

2. Accountability and Assessment Committee. Charge: to consider all matters relating to student, school, and district accountability; to consider all student assessment issues; to determine necessary student and school level interventions based on assessment results of mandated testing; to coordinate resources for school improvement; to monitor the performance of students and schools; to align the school approval process with the accountability system; to provide for remediation related to high stakes testing; and to organize issues-related information to guide board decisions.

3. Board Administration/Relations Committee. Charge: to improve the credibility and visibility of the board and communicate the problems and needs of education through activities of the board and the state superintendent, department, and Regional Service Centers; to consider routine administrative matters of the board; to administer the state superintendent's evaluation; to receive updates on the benefits of any department reorganization; to consider issues impacting the BESE Special Schools, the Special School District, and the Recovery School District; to develop policies and procedures for charter school authorizing; to administer loan fund activities of charter schools; and to organize issues-related information to guide board decisions.

4. Finance/Audit Review Committee. Charge: to provide for a budget process; to annually develop and adopt a formula to equitably allocate education funds to parish, city, and community school systems; to formally review operational plans developed by BESE, LDE, the BESE Special Schools, the Special School District, and the Recovery School District prior to submission to the Office of Planning and Budget; to approve grant allocations; to grant budget approval for the LDE, BESE, the BESE Special Schools, the Special School District, and the Recovery School District; to review and approve all contracts and leases with agencies under its jurisdiction; to review and address audit reports and plans to correct irregularities; to consider payment of invoices submitted for approval; and to organize issues-related information to guide board decisions.

5. Legal/Due Process Committee. Charge: to consider legal issues and matters of litigation; to serve as an "administrative court of last resort" prior to adjudication in the judicial court system (usually revocation/reinstatement

of teaching certificates and removal or disciplinary actions involving tenured teachers of the BESE Special Schools and the Special School District); and to organize issues-related information to guide board decisions.

6. Legislative/Policy Oversight Committee. Charge: to study the impact of current and proposed state and federal legislation; to identify the board's role in new legislation; to develop position statements and/or white papers on education-related legislation pending before the legislature and to develop committee/floor strategies for proposed legislation; to draft legislative education reform recommendations; and to organize issues-related information to guide board decisions.

7. Quality Educators Committee. Charge: to establish teacher certification standards, including course studies and teacher licensing tests; to consider waivers and/or appeals to standards in special circumstances; to provide for teacher evaluation and assistance, including mentoring; to provide for professional development and leadership development designed to improve teaching and learning; to review the impact of professional development activities on teaching and learning; to coordinate activities of the Louisiana Center for Educational Technology; to coordinate partnerships between secondary and post-secondary institutions; to approve teacher preparation units; and to organize issues-related information to guide board decisions.

8. Student and School Standards/Instruction Committee. Charge: to consider all matters relative to school and student standards; to set standards for high school graduation options; to establish Grade Level Expectations and Comprehensive Curricula aligned with the state content standards; to provide for the education needs of special populations; to provide for adequate textbooks and materials of instruction; to consider issues related to the Workforce Investment Act; to build an articulated framework from K-16; to consider school support matters such as Early Childhood, nutrition and transportation services, parental involvement, community-based learning, school safety, migrant education, child welfare and attendance; to make recommendations for community support in the area of adult/parental education and training; to approve nonpublic schools in compliance with *Brumfield v. Dodd*; and to organize issues-related information to guide board decisions.

C. Special Committees. The board may establish short-term committees with a specified focus area to study selected strategic initiatives. Each special committee shall be terminated when the purpose for which it was created has been considered and finally acted upon by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

### **§503. Advisory Councils**

A. Functions. In general, the function of an advisory council is to advise the board, directly or through its standing and special committees, in the discharge of its policymaking, supervisory control, and budgetary duties and responsibilities. Specific functions of an advisory council are determined by the creating law or policy. Advisory councils deal exclusively with matters referred to them by the board. Matters referred to advisory councils are those that require external input regarding funding decisions, policy matters that need to be reviewed for local impact, bulletin revisions

containing policies or supervisory controls, and matters particular to a council for which it was created. Department staff provides the board with a statewide and nationwide perspective on certain issues, while advisory councils respond from a local or community perspective.

B. Composition. Unless otherwise provided by state or federal law, each advisory council of the board is created by board policy. The policy determines the size of the council membership; the number of persons to be appointed by the board; the persons, organizations, affiliations, or interest groups to be represented on a council; and the length of terms. Unless required by law, no member of the board is a member of an advisory council.

C. Creation. The following advisory councils are created.

1. 8(g) Advisory Council
  - a. Authority: per BESE policy.
  - b. Membership: 16 members as follows.
    - i. Eleven members, one member recommended by each BESE member from the following categories:
      - (a). one representative of a business partner in education;
      - (b). one LEA grant administrator;
      - (c). one elementary principal;
      - (d). one secondary principal;
      - (e). one representative of a nonpublic school system;
      - (f). one representative of a public charter school;
      - (g). one LEA supervisor;
      - (h). one teacher, grades PreK-6;
      - (i). one teacher, grades 7-12;
      - (j). one LEA superintendent; and
      - (k). one 8(g) evaluator.
    - ii. Louisiana PTA President; and
    - iii. two Ex Officio members from the legislature, recommended by the Senate President, from the following categories:
      - (a). chair or member of the Senate Committee on Education; and
      - (b). chair or member of the Senate Committee on Finance;
    - iv. two Ex Officio members from the legislature, recommended by the Speaker of the House, from the following categories:
      - (a). chair or member of the House Committee on Education; and
      - (b). chair or member of the House Committee on Appropriations.
  - c. Referrals/Responsibilities
    - i. Make recommendations with respect to the board's annual establishment of priorities.
    - ii. Make recommendations concerning any Louisiana Quality Education Support Fund policies, procedures, and/or activities.
    - iii. Participate in any public hearing conducted by the board relative to the Louisiana Quality Education Support Fund.
    - iv. Consider all matters referred by the board.
2. Adult Education Advisory Council
  - a. Authority: per BESE policy.
  - b. Membership: 11 members, one member recommended by each BESE member.

c. Referrals/Responsibilities

i. Review and comment on the department's recommendations for disbursement of grants and awards to local education agencies and qualified nonprofit entities.

ii. Make recommendations concerning the State Plan for Adult Education.

iii. Consider all matters referred by the board.

3. Louisiana Educational Assessment Testing Commission

a. Authority: per state statute (R.S. 17:24.4).

b. Membership: 16 members, provided by law as follows. Each member of the commission shall serve a four-year term, except that the member appointed by the governor shall serve a term concurrent with the governor. A member may be reappointed:

i. one certified teacher appointed by the Louisiana Association of Educators;

ii. one certified teacher appointed by the Louisiana Federation of Teachers;

iii. one certified teacher appointed by the Louisiana Association of School Executives;

iv. one certified teacher appointed by the Associated Professional Educators of Louisiana;

v. one superintendent appointed by the Louisiana Association of School Superintendents;

vi. one principal appointed by the Louisiana Association of Principals;

vii. one school board member appointed by the Louisiana School Boards Association;

viii. one member of the Board of Elementary and Secondary Education, or designee, appointed by that board;

ix. one member of the Board of Regents, or designee, appointed by that board;

x. chair of the House Committee on Education, or designee, appointed by the Speaker of the House;

xi. chair of the Senate Committee on Education, or designee, appointed by the Senate President;

xii. one member appointed by the governor;

xiii. one member of the Department of Education's professional staff appointed by the state superintendent;

xiv. one parent of a child in a public school appointed by the Louisiana Parent-Teacher Association;

xv. one citizen, interested in education, appointed by the Board of Elementary and Secondary Education; and

xvi. one dean of a college of education from a state college or university, appointed by the Board of Elementary and Secondary Education [President of the Louisiana Association of Colleges of Teacher Education (LACTE)].

c. Referrals/Responsibilities

i. Study elementary and secondary education testing issues, indicators of student performance, and the results thereof.

ii. Serve in an advisory capacity to the board and recommend procedures for conducting, maintaining, and reporting reliable accountability measures of student performance.

iii. Consider all matters referred by the board.

4. Nonpublic School Commission

a. Authority: per state statute (R.S. 17:11).

b. Membership: 11 members, one member recommended by each board member, representing approved nonpublic schools.

- c. Referrals/Responsibilities
  - i. Advise and counsel with the board relative to standards and guidelines affecting nonpublic schools.
  - ii. Consider all matters referred by the board.
- 5. Parish Superintendents' Advisory Council
  - a. Authority: per BESE policy.
  - b. Membership: 22 members as follows:
    - i. 22 members, two parish superintendents recommended by each of the eight elected board members, within his/her district, if possible. The three at-large members should each appoint two parish superintendents from BESE Districts 3-8, with no more than one appointment per BESE district. It is recommended that the composition reflect all sizes of systems and be equitable in the regions represented, to the extent possible;
    - ii. the president of the Louisiana Association of School Superintendents (LASS) shall serve as chair of the council. In the event the president of LASS is not an appointed member of the council, the membership shall expand to 23 members during the term of service of that individual;
    - iii. attendance. Members who cannot attend a meeting may appoint another superintendent from his/her BESE district to represent him/her, and the proxy shall have the same voting privileges;
    - iv. expenses. Members shall not receive reimbursement for travel expenses from the board.
  - c. Referrals/Responsibilities
    - i. Consider all matters referred by the board.
    - ii. Recommendations from the Parish Superintendents' Advisory Council shall go to the appropriate board committee. The department shall provide responses to the various recommendations.
- 6. Special Education Advisory Council
  - a. Authority. Pursuant to federal law and regulations (34 CFR 300.650-652) and to state law (R.S. 17:1954), the Special Education Advisory Council is created to assist the board in its programmatic and budgetary responsibilities for special education programs.
  - b. Membership: 17 members as follows. A majority of the voting members of the panel (nine) shall be individuals with disabilities or parents of children with disabilities, ages birth through 26. The advisory council shall be representative of the state population and composed of individuals involved in, or concerned with, the education of children with disabilities:
    - i. 11 members, one member recommended by each board member, from the following categories:
      - (a). two parents of children with disabilities (ages birth through 26);
      - (b). one individual with a disability;
      - (c). one special education teacher;
      - (d). one regular education teacher;
      - (e). two representatives of institutions of higher education that prepare special education and related services personnel;
      - (f). one local education official;
      - (g). one administrator of a program for children with disabilities;
      - (h). one representative of a private school;
      - (i). one representative of a public charter school;

- ii. one representative of a state agency involved in the financing or delivery of related services to children with disabilities, recommended by the Department of Health and Hospitals;
- iii. one representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities, recommended by Louisiana Rehabilitation Services;
- iv. one administrator of a program for children with disabilities, recommended by a USDOE designated Parent Training and Information Center;
- v. one representative from the state juvenile/adult corrections agencies, recommended by the Department of Public Safety/Corrections;
- vi. one state or local education official who carries out activities of the McKinney-Vento Homeless Assistance Act, recommended by the Louisiana State Superintendent of Education;
- vii. one representative from the state child welfare agency responsible for foster care, recommended by the Department of Social Services.
- c. Referrals/Responsibilities
  - i. Advise the state educational agency of unmet needs within the state in the education of children with disabilities.
  - ii. Comment publicly on any rules or regulations proposed by the state regarding the education of children with disabilities.
  - iii. Advise the state educational agency in developing evaluations and reporting on data to the U.S. Secretary of Education.
  - iv. Advise the state educational agency in developing corrective action plans to address findings identified in federal monitoring reports.
  - v. Advise the state educational agency in developing and implementing policies relating to the coordination of services for children with disabilities.
  - vi. Review and comment on the department's recommendations for disbursement of competitive grants and awards to local education agencies and qualified nonprofit entities; and
  - vii. Consider all matters referred by the board.
- 7. Teacher Certification Appeals Council
  - a. Authority: per BESE policy.
  - b. Membership: nine members representing the following categories and organizations:
    - i. three college of education faculty, recommended by the Louisiana Association of Colleges for Teacher Education (LACTE):
      - (a). at least one must represent a nonpublic university; and
      - (b). at least one must represent a university participating in a Practitioner Teacher Program;
    - ii. three classroom teachers, one recommended by each of the following organizations:
      - (a). Associated Professional Educators of Louisiana (APEL);
      - (b). Louisiana Association of Educators (LAE);
  - and
    - (c). Louisiana Federation of Teachers (LFT);

iii. three local education administrators, one recommended by each of the following organizations:

- (a). Louisiana Association of Principals (LAP);
- (b). Louisiana State Association of School Personnel Administrators (LSASPA); and
- (c). Louisiana School Supervisors' Association (LSSA).

c. Referrals/Responsibilities

i. Evaluate the appeals of persons seeking Louisiana certification under the standards contained in *Bulletin 746—Louisiana Standards for State Certification of School Personnel*, including appeals documents and transcripts of appellants.

ii. Submit a written record of its findings and recommendations to the Quality Educators Committee, composed of board members, for its review and recommendation to the board.

iii. The council shall not consider appeals of persons who are non-degreed, and/or lack the required NTE/PRAXIS scores, and/or requests to waive state statutes pertaining to certification.

iv. Consider all matters referred by the board.

8. Textbook/Media/Library Advisory Council

a. Authority: per BESE policy.

b. Membership: 14 members as follows:

i. one member of the legislature (state senator), recommended by the Senate President;

ii. one member of the legislature (state representative), recommended by the Speaker of the House;

iii. one member recommended by the governor;

and

iv. 11 members, one member recommended by each board member, from the following categories:

(a). one teacher, grades K-6;

(b). one teacher, grades 7-12;

(c). one teacher (any grade) or coordinator of technology;

(d). two school librarians;

(e). one curriculum supervisor;

(f). two textbook supervisors;

(g). one parent or business representative;

(h). one LEA superintendent; and

(i). one school principal.

c. Referrals/Responsibilities

i. Advise the board on policy and procedure issues relating to the textbook adoption process.

ii. Consider all matters referred by the board.

d. Special Advisory Committees. Special advisory committees may be created by the board with a limited charge and scope to study a specific topic as referred by the board.

D. Officers. Unless otherwise provided by state or federal law or board policy, each advisory council shall select from among its membership a chair and a vice-chair. Elections shall be held annually at the first meeting in a fiscal year, and the councils shall report election results to the board.

E. Membership

1. Terms. Unless otherwise provided by state or federal law, persons recommended by board members/organizations/agencies to advisory councils shall serve at the pleasure of their recommending authority. All

appointments are subject to ratification by the board. Removals, however, are not subject to board ratification, and a council member may be removed without cause by the board member recommending the appointment, by his/her successor, or by the recommending agency. Appointees must maintain employment/qualifications appropriate to the organizational category being represented. Once a member retires, becomes employed in a different capacity, or otherwise fails to maintain eligibility, the member shall become ineligible to continue to serve and shall be replaced.

2. Vacancies. A vacancy in an appointed position shall occur if an appointee, for any reason, is unable to serve the full extent of his/her term. Appointments to fill vacancies shall be considered interim appointments and shall be ratified by the board.

3. Expenses. Members of advisory councils may be entitled to reimbursement for travel expenses if specified by statute or not prohibited by board policy, pending availability of funds. Requests for reimbursement for expenses shall be submitted in accordance with the regulations promulgated by the Commissioner of Administration in the *Louisiana Travel Guide*.

4. Quorum. Unless otherwise provided, a quorum is a majority of the appointed membership. In the absence of a quorum, the advisory council may take action, but minutes submitted to the board shall indicate that the recommendations are being presented without the required quorum being present. When it is known beforehand that a quorum is unlikely, the council chair shall be so notified and the meeting shall be canceled.

5. Proxy. Any person serving on an advisory council who cannot attend a scheduled meeting may appoint a person to attend as his/her proxy. Unless otherwise provided herein, no proxy shall have voting privileges. A proxy, in order to receive reimbursement for travel and other expenses, must be properly appointed by the active member and recorded in the minutes as being present.

6. Attendance Policy

a. Appointed members are expected to attend all scheduled meetings of an advisory body. Unless otherwise provided, if a member is unable to attend a meeting, a request for an excused absence may be submitted to the council chair or the executive director and a non-voting proxy may be named by the appointed member to serve for a total of three meetings. Any appointed member who misses three consecutive meetings without an approved excuse shall be automatically terminated, and the appointing authority shall be asked to name a replacement.

b. The appointing authority for each member shall be notified immediately following each scheduled meeting indicating nonattendance of the appointee. The notification should include:

i. name of the council member and council on which serving;

ii. date of the meeting; and

iii. board policy on attendance.

F. Meetings

1. Each advisory council shall meet whenever necessary in order to consider referrals from the board. Special meetings shall be by call of the board, and emergency meetings may be called at the discretion of the executive director.

2. When possible, regular meeting dates shall be scheduled one year in advance and shall be determined by the executive director or his/her designee. When meetings cannot be regularly scheduled, the executive director or his/her designee shall set each meeting date in consultation with the chair of each council.

3. Notices of council meetings shall be mailed to council members by the board staff at least 10 days in advance of a meeting, calendar permitting. All council meetings shall be conducted in accordance with the Louisiana Open Meetings Law (R.S. 42:6.1).

4. In all particulars, except for those listed in these rules and procedures, the business in advisory councils shall be conducted according to *Robert's Rules of Order*.

5. Every motion passed by an advisory council, whether or not made as a recommendation, shall be made as a main motion and must be seconded. All motions must be voted on and roll call votes may be requested by any of the membership in attendance at a meeting.

a. Requests from advisory councils for data/reports must be made in the form of a motion, requesting that the board direct the department or BESE staff to provide such information to the council making the request.

6. The minutes and reports of each advisory council shall be presented to the board's executive director for referral to the board. Actions taken in response to referrals shall be forwarded to the appropriate standing and/or special committee(s). A standing and/or special committee, after consideration of the recommendations of the advisory council, shall report its recommendations to the board for final action.

7. All meetings of standing and special committees and councils shall be considered official functions of the board to assist in the execution of board responsibilities and duties.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:6(A)(15), R.S. 17:24.4, R.S. 17:11, 34 CFR 300.650-652, and R.S. 17:1954.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

## **Chapter 7. Operations**

### **§701. Public Meeting Notice**

A. Compliance with the Open Meetings Law. All meetings of the board, its committees, and advisory councils shall be conducted according to provisions of the Open Meetings Law.

B. Public Notice. Public notices for regular and special meetings of the board, its standing and special committees, and its advisory councils shall be made as required by Louisiana's Open Meetings Law. A 24-hour written public notice shall be given of any regular, special, or rescheduled meeting of the board, its standing and special committees, and its advisory councils. The 24-hour public notice shall include the agenda, date, time, and place of the meeting, as posted on the BESE website.

C. Cancellations. Cancellations of any board or committee meetings shall be made only after a 24-hour notice to board members, or in the event of the absence of a quorum, at the scheduled time and place of the meeting.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 42:5, R.S. 42:7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

### **§703. Regular and Special Meeting Schedules**

A. The board annually sets board and committee meeting schedules for the upcoming fiscal year in January of each year. No meetings are scheduled in July, November, and March.

B. Regular Board Meetings. The president of the board shall call regular board meetings at least four times a year to fall within calendar quarters. Regular meetings of the board shall convene on the third Thursday of the month, except when meetings are adjusted to accommodate the holidays. A simple majority of board members may agree to meet on another day.

C. Special Board Meetings. Special meetings of the board may be held upon call of the president, and the president shall call a special meeting whenever requested to do so by a majority of the total members of the board.

D. Joint Board of Regents (BOR)/BESE Meetings. The Board of Regents shall meet with BESE at least twice a year to coordinate programs of public elementary, secondary, vocational-technical, career, and higher education.

E. Regular Committee Meetings. The chair of each standing or special committee of the board shall conduct regular committee meetings at such times as scheduled for consideration of items referred by the board to the committee.

F. Special Committee Meetings. Special meetings of a standing or special committee may be held upon call of the committee chair, and the chair shall call a special meeting whenever requested to do so by a majority of the total named members of the committee.

#### **G. Committee of the Whole**

1. The board may, if it so desires, constitute itself as a committee rather than as a full body and proceed to discuss matters as if it were in a committee, i.e., with relaxed rules.

2. When the board convenes itself as a Committee of the Whole, it acts as any regular standing committee, which has received a referral(s) from the board. Its discussion is limited to the item(s) of referral, and it has no greater authority than a regular committee. The board president convenes and adjourns the meeting, and each committee chair presides over that portion of the meeting pertaining to the issues routinely considered by his/her committee. Votes are not final, and committee actions are considered to be recommendations from the committee to the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3(E), R.S. 17:6(A)(10), and Article VIII, Section 5(D).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

### **§705. Agenda**

#### **A. Establishing Board Agenda**

1. The board recorder shall prepare the agenda.

2. A board member, the state superintendent, or the executive director may request that any item be included thereon either at a prior meeting or within the specified time before preparation and mailing of the agenda.

3. A board member, the state superintendent, or the executive director must request that an item be placed on the emergency agenda at least 24 hours prior to a scheduled meeting.

#### **B. Establishing Committee Agenda**

1. The agenda for each committee shall consist of only those items publicly noticed in accordance with the Louisiana Open Meetings Law.

2. The agenda for each committee meeting shall include consent items, standing items, unfinished business, new business resulting from board referrals, and public comments received regarding Notices of Intent.

3. Items shall be placed on committee agenda by using either the board's referral process or the draft agenda process as established through a board protocol. Items may be referred by board members, the state superintendent, or the executive director of BESE.

C. Mailing and Posting of the Agenda. The agenda for board and committee meetings shall be mailed to board members at least 10 days prior to the meeting date and posted on the web at <http://www.louisianaschools.net>.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

#### **§707. Action/Quorum**

A. Official Board Action/Quorum. A quorum of the board consists of six of its members who must be present in order that official business may be legally transacted. Official board action requires that any matter be submitted to the board by motion duly seconded. The chair states the motion and calls for discussion, after which the board may act on such matter following repetition of the motion by the chair. Six members of the board shall constitute a quorum for the transaction of business, and all official actions of the board shall require the favorable vote of a majority of the total membership.

B. Unofficial Committee Action/Quorum. A quorum of a committee consists of at least two of its named members. Any board member attending a committee meeting has full voting privileges and may be substituted as a named member of a committee as needed to establish a quorum. Unofficial committee actions require the favorable vote of a simple majority of the board members present, but no less than two favorable votes are required for a motion to pass.

#### C. Procedural Rules

1. All procedural rules adopted herein, or by reference, shall govern business to the extent that they are not inconsistent with the Louisiana Open Meetings Law or any other applicable state law.

2. All other rules and procedures not modified by these guidelines shall be governed by *Robert's Rules of Order*, revised edition, to the extent that such is not inconsistent with state law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3(C) and R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

#### **§709. Board and Committee Meeting Protocol**

##### A. Meetings, Recess, and Adjournment

1. A *meeting* of the board or a committee of the board is a convening of a quorum of the members to receive information regarding a matter or to deliberate or act on a matter over which it has supervision, control, jurisdiction, or advisory power. Depending on the business to be transacted, a meeting may last from a few minutes to several hours and may be carried over for more than one day, if deemed necessary. A meeting does not include chance meetings or social gatherings of the members of the board at which there is no vote or other action taken, including formal or informal polling of the members.

2. A board meeting is a meeting of a majority of the total membership of the board to take official action on matters before it. The president of the board shall preside over the board meeting, unless absent, in which case the presiding officer shall be governed by the provisions set forth in §305 herein.

3. A committee meeting is a meeting of a quorum of the named committee members to consider and make recommendations on matters before it. The committee chair shall preside over the committee meeting, unless absent, in which case another named member of the committee shall preside.

4. A *recess* is an intermission of a meeting which does not end the meeting or destroy its continuity as a single gathering, and after which proceedings are immediately resumed from the point of interruption.

5. An *adjournment* terminates the meeting.

##### B. Motions

1. Procedures for the making of motions shall follow *Robert's Rules of Order*, unless modified by these guidelines.

2. The BESE staff member facilitating a meeting shall read each agenda item prior to the matter being considered. If the matter involves a report or presentation by a department or BESE staff member or other authorized representative, he/she may make the presentation and members may discuss and ask questions regarding the matter prior to the making of a motion.

3. There shall be no discussion on a motion until it is seconded. The discussion shall be limited to the merits of the pending question. The order of discussion shall be left solely to the discretion of the presiding officer or chair. No member shall speak without first receiving recognition of the presiding officer or chair.

4. Each member shall be allowed to speak no more than twice on the same motion, unless he/she requests permission of the presiding officer or chair to be allowed to answer something of a personal nature or to correct a gross mistake. This shall in no way be interpreted to supersede the personal privilege prerogative of each member, as provided herein.

5. The maker of a motion shall be given the first opportunity to speak and to close on the motion, if he/she so desires. It is recommended that each member, in discussing an issue, attempt to:

a. confine his/her remarks to the merits of the pending question;

b. refrain from attacking a member's motives;

c. address all remarks through the presiding officer or chair;

d. refrain from speaking on a prior action unless it is reconsidered by the board or committee;

e. read reports, quotations, etc., only without objection;

f. refrain from disturbing the board or committee meeting, if possible;

g. limit comments so everyone who wishes to speak on a motion may do so; and

h. refrain from engaging in prolonged question and answer dialogue with staff on specific issues that could be addressed before/after the meeting.

6. There shall be no more than two amendments to a motion that is before the body. If one of these two is removed, another may be added.

7. A motion to close debate requires a 2/3 vote of those members present and voting.

8. Only those motions pertaining to items that are included in the agenda and are germane shall be considered.

#### C. Voting

1. All voting shall be by voice vote, except when taken by roll call vote or when a member requests that his/her vote be recorded for the record.

2. A roll call vote must be taken on any motion if requested by any one member of the board. Roll call votes shall be taken alphabetically, except that the presiding officer or chair shall have the option of voting last in order or not voting.

3. A roll call vote must be taken on any motion to convene into executive session.

4. At the board meeting, when approving committee minutes and acting on committee recommendations, any board member can request that a matter be addressed by the board.

#### D. Rules of Conduct

1. Board members and staff should be on time for meetings, especially the first meeting each day.

2. The presiding officer or chair should be cognizant of the schedule for board and committee work and attempt to conduct business within the time allotted. The presiding officer shall have the right to limit, in time, the length of discussion on each motion, if time is of a critical nature.

3. It is the responsibility of the presiding officer or chair to direct the orderly meeting discussion. The presiding officer or chair, as an individual member, has the same right to discussion as any other member, but the impartiality required of the presiding officer in a discussion precludes his/her exercising these rights while he/she is presiding. If the presiding officer or chair wishes to make lengthy discussion comments he/she should relinquish the chair, secure recognition, and participate. It is requested that any remarks that the presiding officer wishes to make concerning an issue be made after all other members have been recognized.

4. Department personnel should condense all presentations as much as possible and only in special instances should these presentations exceed 30 minutes.

5. An individual board member may request from the department any public document, which has already been prepared or is in a readily available form.

6. A board member may not request new research, records, or reports not available and which requires compilation or research without a motion adopted by a majority of the board.

7. Persons other than the executive director, staff persons assigned to the committee, the state superintendent, or the deputy superintendents should not be on the dais while business is being conducted.

8. The presiding officer or chair should ask all presenters to identify themselves for the record.

9. Private discussions among board member(s), staff, or the state superintendent should occur away from the designated meeting area. The audience is asked to go outside the meeting room for their personal discussions.

10. Board members are asked to remain seated when local school personnel are making presentations to the board, as it is always an honor to be recognized by state-level officials.

11. Cell phones and beepers should be turned off or taken to the side rooms for conversations when activated.

12. Each member shall have the opportunity to speak on personal privilege following request by the member and recognition by the presiding officer. This privilege shall be conducted according to *Robert's Rules of Order*.

13. When a member feels the rules are being violated as to procedure, the member may make a Point of Order request to the presiding officer, calling for a ruling and an enforcement of the regular rules. A Point of Order shall follow procedures in *Robert's Rules of Order*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 42:4.2, R.S. 17:3(C), R.S. 42:5(C), and R.S. 42:6.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

#### §711. Order of Business for Board Meetings

A. The presiding officer shall call the meeting to order and request that the executive director call the roll to determine the presence of a quorum.

B. The proposed agenda shall be adopted as the official order of business for the meeting, including unfinished business from the preceding meeting and any emergency items, as publicly noted. The agenda adopted shall not include any items that have not been posted pursuant to §701.B and the Louisiana Open Meetings Law.

C. The minutes of the preceding meeting of the board, if available, shall be considered and approved.

D. The board may consider ceremonial acknowledgments as determined by the presiding officer. Such ceremonial acknowledgments should generally be made on behalf of the board by the presiding officer and the member representing the recipient's district.

E. The board shall hear committee reports from the chair of the committee or his/her designee and act on recommendations of the committee.

F. The board shall consider and act on other items on the agenda adopted in compliance with the procedures herein, including any emergency items.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

#### §713. Public Comments

NOTE: It should be noted that BESE meetings, while open to the public, are not public hearing forums; therefore, public comments shall be allowed at the discretion of the presiding officer or chair, subject to the provisions provided herein.

A. In order to carry on its business in an orderly and efficient manner, the board utilizes standing committees and special committees. Full discussion of board business usually occurs at the committee level, and public comment should ideally be at that time rather than after a recommendation has been forwarded to the board. Opportunity to comment publicly on a committee or board agenda item may be provided to a representative number of proponents and opponents according to the following procedures.

1. Persons desiring to address the committee/board should complete a Request to Comment Card and submit it to the presiding officer or a BESE staff member prior to the

beginning of the meeting. The completed card should identify the issue or item to be addressed. Other members of the public may be recognized at the discretion of the presiding officer or chair.

2. All speakers shall conduct themselves in a decorous manner.

3. The presiding officer or chair shall have the right to limit, in time, the length of discussion on each motion, if time is of a critical nature.

4. The order of discussion shall be left solely to the discretion of the presiding officer or chair.

5. Persons addressing the committee/board shall confine remarks to the merits of a specific agenda item before the committee/board; refrain from attacking a board member's motives; address all remarks through the presiding officer or chair; refrain from speaking adversely on a prior action not pending; read reports only without objection; and refrain from disturbing the meeting.

6. Public comments should be limited to 3 minutes per person.

7. Persons making public comments shall identify themselves and the group they represent, if any.

8. Groups and/or organizations should designate one spokesperson.

9. The presiding officer or chair shall have discretion to manage situations not addressed in these procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) and R.S. 42:5(D).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

#### **§715. Executive Session**

A. An executive session of the board or its committees shall be conducted in accordance with state law and ordinarily shall include, but not be limited to, matters dealing with personnel, security measures, prospective litigation, and pending litigation.

B. The board may hold an executive session upon an affirmative vote, taken at an open meeting, of two-thirds of its constituent members present. The vote shall be taken by roll call vote. The vote of each member and the reason for holding an executive session shall be recorded and entered into the minutes of the meeting.

C. No final or binding action shall be taken during executive session.

D. When pending or prospective litigation may be considered by the board in executive session, the following information must be included in or attached to the written public notice of the meeting:

1. A statement identifying the court, case number, and the parties relative to any pending litigation.

2. A statement identifying the parties involved and reasonably identifying the subject matter of any prospective litigation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:6, R.S. 42:6.1, and R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

#### **§717. Tape Recordings**

A. Tape recordings are made of all official meetings of the board, its committees, and advisory councils.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

#### **§719. Minutes**

A. In accordance with the Open Meetings Law, the board shall keep written minutes of all of its open meetings. All meetings of standing and special committees and advisory councils shall be considered official functions of the board to assist in the execution of board responsibilities and duties; and actions of the committees and advisory councils, to be operative, shall be recorded and presented to the board at its next regular meeting.

B. The advisory council, committee, and board minutes shall include, but need not be limited to:

1. the date, time, and place of meeting;

2. the members recorded as either present or absent;

3. the substance of all matters decided, and, at the request of any member, a record, by individual member, of any votes taken;

4. any other information that a member requests be included or reflected in the minutes.

C. Board minutes shall not include roll call votes, abstentions, "yes" or "no" votes, or recusals placed on the record in committee.

D. A committee or board member may request that his/her views on individual items become part of the committee or board meeting minutes. To become part of the committee minutes, such views must be expressed at the committee meeting. To become part of the board minutes, such views may be expressed at the board meeting or may be presented to the board recorder, in writing, within three working days after the board meeting.

E. Board minutes shall be considered unofficial until approved by the board at its next scheduled meeting, at which time they become official.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:7.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

#### **§721. Records Retention and Destruction**

A. All records of the board are maintained and/or destroyed in accordance with the board's Record Retention Policy and Records Retention Schedule on file at the Office of the Secretary of State, Division of Archives, Records Management, and History.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) and R.S. 44:36

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

#### **§723. Documents, Papers, Property**

A. No documents, papers, or any other property of the board shall be removed from the office of the board without the authorization of the board or of its executive director.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

### **Chapter 9. Equal Employment**

#### **§901. Equal Employment Opportunity; Affirmative Action**

A. In compliance with all applicable federal and state laws and regulations (including, but not limited to, Title VII of the Civil Rights Act of 1964), the Board of Elementary

and Secondary Education upholds the following policy: This is an equal opportunity agency and is dedicated to a policy of nondiscrimination in employment in all agencies and institutions under its direct supervision (Louisiana Department of Education, the Special School District, and the BESE Special Schools). Applicants and employees will not be discriminated against on the basis of race, color, creed, national origin, sex, religion, age, handicap, or any other non-merit factor in any aspect of employment such as recruitment, hiring, promotion, retention, tenure, discharge, layoff, compensation, leave, fringe benefits, training, or any other employment practice or benefit.

B. Should violations of any equal employment opportunity laws or regulations occur, appropriate disciplinary action will be taken by the appointing authority.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

### **§903. Civil Rights Compliance and Assurances**

A. In compliance with all applicable federal and state laws and regulations (including, but not limited to, Title VI of the Civil Rights Act of 1964; Title IX of the Education Amendments of 1972; §504 of the Rehabilitation Act of 1973), the Board of Elementary and Secondary Education upholds the following policy: This is an equal opportunity agency and is dedicated to a policy of nondiscrimination in all programs or activities under its direct supervision (Louisiana Department of Education, the Special School District, and the BESE Special Schools) or jurisdiction including city, parish, or other local public school systems or other entities receiving state or federal financial assistance through the board. No one will be discriminated against in any employment practice or in any educational program or activity on the basis of race, color, creed, national origin, sex, religion, age, handicap, or any other non-merit factor.

B. The board will receive and oversee distribution of state and federal funds to city, parish, or other local public school systems or other entities qualifying for financial assistance for educational programs.

C. The board will enter into agreements with funding agencies as are necessary to ensure nondiscrimination and will submit such reports as may be required.

D. The staff of the Louisiana Department of Education will conduct compliance activities as required by agencies providing funding to ensure compliance with their regulations.

E. All appropriate records shall be maintained and will be available for inspection by those agencies providing financial assistance.

F. All city, parish, or other local public school systems or other entities under the jurisdiction of the board which receive state or federal financial assistance through the board will sign an assurance document stating that they will comply with all applicable board policies, Louisiana Department of Education regulations, and federal and state laws regarding civil rights compliance.

G. Should violations of any civil rights laws and/or regulations occur, appropriate action will be taken by the board in conjunction with the respective funding agency. Such actions may include voluntary compliance, remedial action, or withholding financial assistance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

## **Chapter 11. Finance and Property**

### **§1101. Projects and Facilities**

#### **A. Capital Projects**

1. All requests for new capital construction or renovation projects submitted by board entities, including the Board Special Schools, the Special School District, and the Recovery School District, shall comply with all applicable state laws, all applicable regulations issued by the Division of Administration, and all BESE policy.

2. Requests for capital projects from the BESE Special Schools shall be submitted to the Special School District State Director.

3. All requests for any given fiscal year shall be prioritized by the Louisiana Department of Education, and the department shall present the priority listing of projects to the board. The board shall approve all capital construction or renovation projects and the priority of the requests prior to submission to the executive and legislative branches of government or prior to implementation of a project, as applicable.

#### **B. Use of Facilities**

1. When facilities of board institutions and facilities under the jurisdiction of the RSD are used for activities other than those of the institution or district, organizations concerned shall be required to reimburse the school for all costs incurred in connection with the activity, and they shall be further required to carry sufficient public liability insurance to protect all parties concerned, including the institutions or district.

2. Dining facilities at institutions or schools under the control of the board are not open to the general public.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

### **§1103. Purchasing, Auditing, and Contracts for Professional Services**

A. Purchasing. Entities under the jurisdiction of the board shall comply with all applicable federal and state laws, rules, and regulations and board policy which govern the purchase of goods and services.

#### **B. Auditing**

1. Entities under the jurisdiction of the board shall submit to an audit of their operations. This audit shall be conducted in accordance with provisions and timelines established by the Office of the Legislative Auditor.

2. Once the Office of the Legislative Auditor has issued a report on the operations of an entity under the board's jurisdiction, it shall be the responsibility of the department to provide the board with a complete analysis of the report and to recommend corrective actions to be taken when necessary.

3. The board shall annually approve the audit plan for the operations of the Bureau of Internal Audit (BIA) within the Louisiana Department of Education.

#### **C. Contracts for Professional Services**

1. Entities under the jurisdiction of the board shall negotiate all contracts for professional/consulting services in accordance with all applicable federal and state laws and in

accordance with all applicable federal and state rules and regulations and board policy.

2. The state superintendent may negotiate and approve contracts for professional/consulting services in an amount determined by the board and shall issue a report to the board on all contracts approved.

3. The state superintendent shall recommend to the board for approval all contracts for professional/consulting services negotiated by the BESE Special Schools and the Special School District under the board's jurisdiction.

4. The state superintendent shall recommend to the board for approval all contracts for professional/consulting services negotiated by the RSD in accordance with board policy.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

### **§1105. Budgets**

#### **A. General Policies**

1. The department, including the Special School District and the Recovery School District, and all entities under the jurisdiction of the board, including the BESE Special Schools, shall submit all budget requests for all funds (state, federal, self-generated, etc.) to the board for review and approval. The entities shall be responsible for complying with all state laws and regulations regarding budget submission to the executive and legislative branches of government.

2. In approving budgets for the department and entities under the board's jurisdiction, the board shall be guided by all state plans adopted for the purpose of administering federal and state funded programs.

B. Budget Submission. The department, including the Special School District and the Recovery School District, and entities under the jurisdiction of the board, including the BESE Special Schools shall submit in a timely manner their budgets to the board for approval prior to submission to the Division of Administration and legislative offices.

C. Budget Forms. The department, including the Special School District and the Recovery School District, and entities under the jurisdiction of the board, including BESE Special Schools, shall submit their budgets on the forms prescribed by the Division of Administration.

D. Amendments and Revisions. Any budget requiring approval by the board can only be amended in accordance with state law and shall be reported to the board.

E. Interim Emergency Board. Prior to the submission of a request for funding from the Interim Emergency Board of the legislature, the department, including the Special School District and the Recovery School District, and entities under the jurisdiction of the board, including the BESE Special Schools, shall complete requests on forms prescribed by the Interim Emergency Board and shall receive approval for submission by the board. Submissions to the Interim Emergency Board shall be in compliance with all rules promulgated by that board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

### **§1107. Minimum Foundation Program**

#### **A. MFP: General Provisions**

##### **1. Board Adoption**

a. The State Superintendent of Education shall prepare and recommend to the board for adoption a minimum foundation formula for the equitable allocation of funds to local school systems for the operation of their educational programs. In considering this recommendation, the State Superintendent shall comply with all appropriate state laws and regulations regarding elementary and secondary education.

b. The board shall adopt a minimum foundation formula for the equitable allocation of funds to local school systems. Once adopted, the board shall transmit the formula to the Joint Legislative Committee on the Budget and all other appropriate entities and offices of the executive and legislative branches of government.

##### **2. Local Responsibility**

a. It shall be the responsibility of parish/city and other local school systems, recovery school district schools, and LSU and Southern Lab schools to submit to the State Department of Education in a timely manner all necessary and required information for the computation of an individual allocation from the minimum foundation formula. This information shall be submitted to the department in the form required by the department. It shall also be the responsibility of all parish/city and other local school systems, recovery school district schools, and LSU and Southern Lab schools to follow all circulars issued by the department providing instructions for the preparation of the required data and other instructions regarding the computation of an allotment from the formula.

#### **B. MFP Payments**

1. Each parish/city and other local school system, recovery school district school, and LSU and Southern Lab school shall receive an allocation from the annual Minimum Foundation Program in 12 payments. These payments shall be incorporated into monthly amounts received from the state for implementation of the Minimum Foundation Program.

#### **C. MFP: Student Membership Definition**

1. Definition. For state reporting for public education for the purpose of establishing the base student count for state funding, each parish/city and other local school system, recovery school district school, and LSU and Southern Lab school shall adhere to the following.

a. All students included for membership in school shall be identified with the following minimum required identification elements: state identification number, full legal name, date of birth, sex, race, district and school code, entry date, and grade placement.

b. For establishing the base student membership count for state funding the following guidelines will be adhered to:

i. no student will be counted more than one time. Students attending more than one school will be counted in membership only one time;

ii. all students, including special education students, will be included in the base student membership count who meet the following criteria:

(a). have registered or pre-registered on or before student count dates designated in the current adopted MFP resolution. (If student count date(s) falls on a Saturday, report membership on the previous Friday. If student count date(s) falls on a Sunday, report membership on the following Monday.);

(b). are actively attending school (all current state laws and BESE policies concerning attendance should be carefully followed. Appropriate documentation [either written or computer documents] such as dates of absences, letters to parents, notification to Child Welfare and Attendance Officers should be placed in individual permanent records for any students who may have absences which raise questions about the student's active attendance.);

(c). and/or have not officially exited from school (Students are considered to have officially exited if a notification of transfer has been provided by the student's parent/legal guardian or received from another school.);

iii. students who are in BESE approved alternative programs (schools) in parish/city and other local school systems, recovery school district schools, or LSU and Southern Lab, will be included in the base student membership count.

iv. students who reside in Louisiana, attend school in another state, and are supported by Louisiana funding will be included in the base student membership count.

v. all special education preschool (ages 3-5) students will be included in the base student membership count.

vi. All special education infant (ages birth-2) students for whom one or more of the sixteen identified services are provided, shall be included in the base student membership count.

vii. Regular pre-kindergarten (four-year-old program) students will not be included in the base student membership count.

viii. Private school students receiving special education services through any public school system or school will NOT be included in the base student membership count.

ix. Students will be included in the base student membership count until the chronological age of 21 years. A student whose twenty-second birthday occurs during the course of the regular school year, will be counted in the base student membership count for that school year.

#### D. MFP: Add-on Students/Units

1. Required Data. For purposes of establishing the data sets used in determining the add-on students/units, the following will be adhered to.

a. At-Risk Student Count shall be determined by the number of students whose family income is at or below income eligibility guidelines or other guidelines as provided by BESE and the number of students identified as English Language Learners (ELL) that were not included based on income eligibility guidelines. The current income eligibility guidelines include those students who have approved applications to participate in the federal free and reduced price breakfast and lunch program. The Fall count is determined by the number of approved applications for the free and reduced price lunch program and those ELL students not included on income eligibility guidelines during the month of October as reported in the Student Information

System (SIS). For any additional required count date(s), the at-risk student count will be those qualifying for free and reduced lunch and those ELL students not included on income eligibility guidelines as reported in SIS, as of that count date.

b. Career and Technical Education Unit Count shall be determined by the number of Secondary Career and Technical Education courses per student as reported by the school districts through the Louisiana Education Accountability Data System (LEADS) for the prior year.

c. Special Education—Other Exceptionalities Student Count shall be determined by the number of Special Education students identified as having "other exceptionalities" in the Special Education Reporting (SER) database as of the student count date(s) including:

i. infants and toddlers ages 0-2, who have a current Individual Family Service Plan (IFSP) and are currently receiving services; and

ii. both public and nonpublic, special education students ages 3-21 identified as having a disability as defined by R.S. 17:1943 who have a current Individual Education Plan (IEP) and are currently receiving services from any local public school system or school. (Students serviced by SSD#1 and certain correctional facilities are excluded.)

d. Special Education—Gifted and Talented Student Count shall be determined by the number of Special Education students identified in the SER database as of the student count date(s) which includes both public and nonpublic special education students ages 3-21 identified as gifted and talented as defined by R.S. 17:1943 who have a current IEP and are currently receiving services from any local public school system or school.

e. Economy of Scale Student Count shall be determined by the number of students in the base student membership count as defined in LAC 28:I.1107.C.1.

AUTHORITY NOTE: Promulgated in accordance with Art. VIII § 13 and R.S. 17:7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

### **§1109. Expenditure of Public Education Monies**

A. All expenditures allocating or obligating public education funds, in particular all state and federal monies, shall be allocated and expended in compliance with applicable federal and state laws, regulations, and policies. Any public employee of the board office who recommends or authorizes contract awards and/or expenditure of funds knowingly to be in violation of federal and state laws and/or BESE regulations or policies shall be subject to disciplinary action, including dismissal from employment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

## **Chapter 13. Regulatory Documents**

### **§1301. Bulletins**

A. All regulatory policies and procedures adopted in response to state statutory requirements, most noticeably Louisiana Revised Statutes, Title 17, are contained in bulletins. Regulatory policies and procedures must be adopted by BESE as Rules through the rulemaking process set forth in Louisiana Administrative Procedure Act (APA). Once adopted, Rules have the force and effect of law. The

*Louisiana Register* requires that rules be codified, adhering to a prescribed uniform system of indexing, numbering, arrangement of text, and citation of authority and historical notes. APA requirements include an advertisement and comment period, as well as oversight procedures for the legislature.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 49:951 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

### **§1303. Rulemaking**

A. A *rule* is a statement, guide, or requirement for conduct or action, exclusive of those regulating only the internal management of the board or the department, which has general applicability and the effect of implementing or interpreting substantive law or policy, or which prescribes the procedure or practice requirements of the board. The term *rule* includes the amendment or repeal of an existing rule.

B. All rules adopted by the board must be adopted in accordance with the Louisiana Administrative Procedure Act (APA).

C. The following process must be followed for adoption of all rules:

1. The board approves a proposed rule to be advertised as a Notice of Intent.

2. Following approval of a proposed rule to be advertised as a Notice of Intent:

a. The appropriate department/BESE staff is requested to submit a Fiscal Impact Statement (FIS), Family Impact Statement, proposed policy language, present policy language (if there is a policy already in existence), and comparison language (if applicable).

b. These documents are submitted to the Legislative Fiscal Office (LFO) for approval.

c. After the Fiscal Impact Statement is approved by the LFO, the board recorder prepares the Notice of Intent in compliance with statutory specifications and submits it to the *Louisiana Register* for publication. A report regarding the rule is also submitted to the appropriate legislative committees.

d. Once the Notice of Intent is published in the *Louisiana Register*, a period of 90 days must elapse to allow for public comment on the proposed policy before the Notice of Intent can be placed on the board agenda for final adoption as a Rule.

e. Any public comments received during that period are forwarded to the LDE/board office, to the appropriate BESE committee, and to the appropriate legislative committees for consideration.

f. In the event that substantive changes are made to the Notice of Intent as a result of the public comments received, the board can choose to:

i. approve for final adoption only those sections that will not be changed as a result of the public comments and readvertise as Notice of Intent only those sections requiring substantive change; or

ii. not approve the Notice of Intent for final adoption, and begin the entire process anew.

3. When the board approves the Notice of Intent for final adoption as a Rule, it is submitted to the *Louisiana Register* for publication. The deadline for submission of information for publication in the *Louisiana Register* is the

10th of the month. Therefore, Notices of Intent approved for final adoption by the board are not advertised as a Rule in the *Louisiana Register* until the month following their approval by the board.

D. Due to the board meeting schedule, the Fiscal Impact Statement approval process, and the *Louisiana Register* deadlines, the entire process takes a minimum of five months to complete.

E. Louisiana Administrative Code, Title 28, Part Numbers XI, ad infinitum, have been reserved for board and department bulletins.

F. Codified board policies are posted on the *Louisiana Register* website and are accessible through links on the BESE website.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 49:951 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

### **§1305. Amendments**

A. Rules may be amended by an affirmative vote of six BESE members at any regular meeting of the board or at any special meeting where the proposed amendment is included on the agenda. The text of any proposed amendment shall be submitted, in writing, to the board and received by its members at least 10 days prior to the meeting at which action is to be taken.

B. The adoption of amendments to rules must follow the procedures outlined in §1303.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 49:951 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

### **§1307. Federal Eligibility Documents**

A. State plans, consolidated state applications, and/or other eligibility documents are state policies and procedures adopted in accordance with federal regulations and/or administrative procedures for the operation of a specific federal program. Such policies and procedures are promulgated in accordance with all federal administrative laws and/or procedures. Examples of federal laws requiring state plans and/or eligibility documents are: Elementary and Secondary Education Act, Individuals with Disabilities Act, and the Adult Education Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10)

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

### **Family Impact Statement**

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

**NOTICE OF INTENT**

**Board of Elementary and Secondary Education**

Bulletin 111—The Louisiana School, District,  
and State Accountability System  
(LAC 28:LXXXIII.703, 4302, 4310, and 4313)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 111—The Louisiana School, District, and State Accountability System* (LAC Part Number LXXXIII). Act 478 of the 1997 Regular Legislative Session called for the development of an accountability system for the purpose of implementing fundamental changes in classroom teaching by helping schools and communities focus on improved student achievement. The state's accountability system is an evolving system with different components that are required to change in response to state and federal laws and regulations.

Proposed identical changes in Bulletin 111, §703 and §4310, combine the 1 percent and 2 percent caps, students scoring proficient on LAA 1 and LAA 2, respectively, to a 3 percent cap. Changes for §4302 propose District Responsibility Indicators for how school districts are to be held accountable, and §4313 eliminates the District Responsibility Index. §4313 also details how a district exits District Improvement status.

**Title 28**

**EDUCATION**

**Part LXXXIII. Bulletin 111—The Louisiana School,  
District, and State Accountability System**

**Chapter 7. Subgroup Component**

**§703. Inclusion of Students in the Subgroup  
Component**

A. - C.1.b.ii. ...

c. Beginning in Fall 2007, districts that exceed the 2 percent cap may do so without penalty if the sum of LAA1 and LAA2 students labeled proficient does not exceed 3 percent of all students tested within the district.

2. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:10.1.

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education, LR 29:2743 (December 2003), amended LR 30:1619 (August 2004), repromulgated LR 30:1996 (September 2004), amended LR 30:2256 (October 2004), LR 30:2445 (November 2004), LR 31:912 (April 2005), LR 31:2762 (November 2005), LR 33:253 (February 2007), LR 34:

**§4302. District Responsibility Indicators**

A. Teacher Certification Indicator

1. The teacher certification indicator is based on the percentage of state core classes (English, mathematics, science, and social studies) taught by three categories of teachers, those with:

a. Standard Teaching Certificate for Area of Assignment;

b. Non-Standard Certificate for Area of Assignment: (Out of Field or Temporary Authority—TAT, OFAT, TEP); and

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? No.

Interested persons may submit written comments until 4:30 p.m., January 9, 2008, to Nina A. Ford, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Board of Elementary  
and Secondary Education**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO  
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The Louisiana Administrative Code, Title 28.Education.Part 1. Board of Elementary and Secondary Education, is the code of conduct for the Board of Elementary and Education and replaces any previously advertised versions. All other policies previously contained in this document have either been rescinded and/or appropriately assigned to other bulletins containing rules affecting agencies external to BESE.

It should be noted that while the document includes policy concerning the Minimum Foundation Program (MFP), the actual cost of the MFP and the fiscal impact of the MFP formula is determined by the MFP resolution.

It should also be noted that the document includes policy concerning the Board of Elementary and Secondary Education's governance of the Recovery School District and the authority of the Board, Department of Education and Recovery School District. The policy language reflects each entity's authority as provided in law, including the authority to receive and expend funds, but does not create any authority not otherwise vested in each entity by law.

This action will have no fiscal effect other than \$1,768.00 for advertising in the *Louisiana Register*.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE  
OR LOCAL GOVERNMENTAL UNITS (Summary)**

This action will have no effect on revenue collections of state or local government units.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO  
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL  
GROUPS (Summary)**

This action will have no effect on cost and/or economic benefits to directly affected persons or nongovernmental groups.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT  
(Summary)**

This action will have no effect on competition and employment.

Weegie Peabody  
Executive Director  
0711#048

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

c. No Authority to Teach (no certification).

2.a. The LDE shall calculate the following two teacher certification indices:

i. low performing schools (1 Star and Academically Unacceptable), and:

(a). in instances when a district's schools all fall into 1 category (low performing or other), the index for that category shall also be considered the overall teacher certification indicator;

ii. other schools—not low performing (2 Star and above).

b. The low performing school index is assigned a 75 percent weighting and the other school index a 25 percent weighting in the teacher certification indicator.

c. Each teacher certification index is calculated by first determining the percentage of state core classes taught by each of the three categories of teachers in the appropriate school group (low performing or other—not low performing).

i. The percentages of state core classes taught by teachers in each category are weighted and converted to points by the following factors:

(a). 1.0 times the percentage of classes taught by teachers with standard certification;

(b). 0.5 times the percentage of classes taught by teachers with non-standard certification;

(c). 0.0 times the percentage of classes taught by teachers with no authority to teach.

ii. Sum the weighted points for low performing schools and again for other schools.

iii. Weight the low performing schools point total by 75 percent.

iv. Weight the other schools point total by 25 percent.

v. The district teacher certification indicator is the sum of the values from iii and iv (above).

vi. Example of the calculation of the district teacher certification indicator.

<i>District Teacher Certification Indicator Calculation</i>					
<i>Certification</i>	<i>Assigned Value</i>	<i>Percentage in Low Performing Schools</i>	<i>Points</i>	<i>Percentage in Other Schools</i>	<i>Points</i>
<i>Standard</i>	1.0	92.4%	92.4	92.2%	92.2
<i>Non-Standard</i>	0.5	5.0%	2.5	4.8%	2.4
<i>No Authority to Teach</i>	0.0	2.6%	0.0	3.0%	0.0
<i>Subtotals</i>	94.9	94.6			
<i>Low Performing Weight</i>	75%	x 94.9	<i>Low Performing Weighted Value</i>	71.2	
<i>Other Schools Weight</i>	25%	x 94.6	<i>Other Schools' Weighted Value</i>	23.7	
	<i>Teacher Certification Indicator</i>	94.9			

3. Districts shall be assigned a label based on the value of the district teacher certification indicator as follows.

<b>District Teacher Certification Indicator</b>	
<b>Indicator Value</b>	<b>Label</b>
97.0 – 100.0	Exceptional
94.0 – 96.9	Adequate
90.0 – 93.9	Marginal
< 90.0	Unacceptable

B. 8th Grade Persistence Indicator. The 8th grade persistence indicator is based on a district's success at keeping 8th grade students enrolled in school.

1. The 8th grade persistence indicator shall be calculated using an aggregate of two years of student data, and because of extensive time afforded districts to correct exit data, it shall use data lagged by one year.

a. Example—The Spring 2007 8th grade persistence indicator shall be calculated using data from academic years 2003-04 and 2004-05.

2. Students enrolled in a district for at least one full day of a given academic year, less those students exiting the district school system for legitimate reasons (as defined in the Student Information System User Guide) shall be included in the denominator used to calculate the 8th grade persistence indicator.

3. Since the calculation aggregates two years of student data, those students eligible for inclusion in the denominator in one or both of the appropriate two years shall provide the count to be used as the denominator.

4. The numerator is comprised of those students in the denominator who are enrolled in public education for at least one day the following academic year.

5. Example of the calculation of the district 8th grade persistence indicator.

<b>District 8th Grade Persistence Indicator Calculation</b>						
<b>Enrolled</b>			<b>Returned Oct 1</b>			
2003-04	2004-05	Total	2004	2005	Total	Percent Returned
669	713	1382	660	702	1362	98.6%

6. Districts shall be assigned a label based on the value of the district 8th grade persistence indicator as follows.

<b>District 8th Grade Persistence Indicator</b>	
<b>Indicator Value</b>	<b>Label</b>
98.0 – 100.0	Exceptional
96.0 – 97.9	Adequate
94.0 – 95.9	Marginal
< 94.0	Unacceptable

C. Financial Risk Indicator. The factors included in the financial risk indicator were originally developed in 2004-05. They are currently under review at the request of the Board of Elementary and Secondary Education. The use of this data as a district responsibility indicator will be defined following any needed revisions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:634 (April 2005), amended LR 33:1611 (August 2007), LR 34:

**§4310. Subgroup Component AYP (Adequate Yearly Progress)**

A. - B.3.b.ii. ...

c. Beginning in Fall 2007, districts that exceed the 2 percent cap may do so without penalty if the sum of LAA1 and LAA2 students labeled proficient does not exceed 3 percent of all students tested within the district.

d. Students participating in LAA 1 or LAA 2 shall be included in the special education subgroup.

e. LEP students shall participate in the statewide assessments.

i. Scores shall not be included in AMO or improvement in percent proficient calculations for LEP

students who have not been enrolled in an English-speaking school for one full school year.

B.4. - E.2.b.Note ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:1447 (July 2004), amended LR 30:2446 (November 2004), LR 31:424 (February 2005), LR 31:633 (March 2005), LR 31:913 (April 2005), LR 32:1029 (June 2006), LR 33:635 (April 2007), LR 34:

**§4313. Corrective Actions**

A. The Louisiana Department of Education shall report district scores and labels on every school district.

B. The district responsibility index and the associated labels are discontinued. Districts must complete a self-assessment only after failing all three clusters in the same subject.

1. The DOE shall review each self-assessment.

2. The DOE may recommend that BESE schedule a district dialogue with the district.

C. - E.3. ...

F. Districts shall exit district improvement if they pass subgroup AYP in the same subject for which they entered district improvement in the same cluster for two consecutive years. An example is in the following table.

<i>Examples of Districts That Entered District Improvement (DI) in 2004 Due to Math Results</i>							
	2005			2006			Result
	K-5	6-8	9-12	K-5	6-8	9-12	
Cluster Performance	Pass	Fail	Fail	Fail	Pass	Pass	Remain in DI
	Pass	Pass	Pass	Fail	Fail	Fail	Advance to DI Level 2
	Pass	Fail	Fail	Pass	Fail	Fail	Exit DI
	Fail	Pass	Pass	Fail	Fail	Pass	Exit DI

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2757 (December 2003), amended LR 30:1449 (July 2004), LR 31:424 (February 2005), LR 31:635 (March 2005), LR 31:1256 (July 2005), LR 33:1334 (July 2007), LR 33:1612 (August 2007), LR 33:2032 (October 2007), LR 34:

**Family Impact Statement**

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

Interested persons may submit written comments until 4:30 p.m., January 9, 2008, to Nina A. Ford, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

**RULE TITLE: Bulletin 111—The Louisiana School, District, and State Accountability System**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

Proposed identical changes in Bulletin 111 §703 and §4310 combine the 1% and 2% caps students scoring proficient on LAA 1 and LAA 2, respectively, to a 3% cap. Changes for §4302 propose District Responsibility Indicators for how school districts are to be held accountable, and §4313 eliminates the District Responsibility Index. §4313 also details how a district exits District Improvement status.

There are no estimated implementation costs (savings) to state or local governmental units as a result of these changes.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There will be no estimated costs and/or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition and employment.

Beth Scioneaux  
Deputy Superintendent  
0711#054

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Board of Elementary and Secondary Education**

Bulletin 111—The Louisiana School, District, and State Accountability System—School Performance (LAC 28:LXXXIII.Chapters 3, 5, and 24)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 111—The Louisiana School, District, and State Accountability System* (LAC 28, Part Number LXXXIII). Act 478 of the 1997 Regular Legislative Session called for the development of an accountability system for the purpose of implementing fundamental changes in classroom teaching by helping schools and communities focus on improved student achievement. The state's accountability system is an evolving system with different components that are required to change in response to state and federal laws and regulations.

Proposed changes in Bulletin 111 delete mention of the obsolete means by which the criterion-referenced and norm-referenced assessments were calculated in prior years. Additionally, proposed changes also clarify the testing population requirements that schools without a district feeder pattern must meet in order to have baseline and/or Growth School Performance Scores calculated (at least 40 full-academic-year students for two consecutive academic years). Additionally, proposed changes specify that existing Rule regarding school exit criteria from the Recovery School District (RSD) in Chapter 24(B) are per R.S. 17:10.5 and that exit criteria for schools that enter RSD per R.S. 17:10.7 are as provided in the statute.

**Title 28**

**EDUCATION**

**Part LXXXIII. Bulletin 111—The Louisiana School, District, and State Accountability System**

**Chapter 3. School Performance Score Component**

**§301. School Performance Score Goal**

A. - E.2.d. ...

3. Beginning in 2008, the preliminary accountability results shall include those schools identified as:

a. failing the SPS component based on the current year Baseline SPS; or

b. failing the SPS component based on the prior year Baseline SPS; or

c. being academically unacceptable (any level) the prior academic year; or

d. failing the subgroup component based on prior spring test results;

e. exiting any level of Subgroup Component Failure in the current year.

F. - L. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2737 (December 2003), amended LR 31:1512 (July 2005), LR 32:1017 (June 2006), LR 32:2034 (November 2006), LR 32:2035 (November 2006), LR 33:424 (March 2007), LR 33:2349 (November 2007), LR 34:

**§305. Calculating the CRT Index**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2738 (December 2003), amended LR 31:2762 (November 2005), repealed LR 34:

**§309. Formula for Calculating a CRT Index for a School [K-8]**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2739 (December 2003), repealed LR 34:

**§311. Calculating the CRT Index [9-12]**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2739 (December 2003), amended LR 31:763 (April 2004), repealed LR 34:

**Chapter 5. Calculating the NRT Index**

**§501. Formulas Relating Student Standard Scores to NRT Index (K-8)**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2740 (December 2003), amended LR 31:1512 (July 2005), repealed LR 34:

**§503. Calculating the NRT Index [K-8]**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2740 (December 2003), repealed LR 34:

**§505. Calculating the NRT Index [9-12]**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2740 (December 2003), repealed LR 34:

**§507. Formula for Calculating a NRT Index for a Combination School**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2740 (December 2003), repealed LR 34:

**§509. Inclusion of Alternate Assessment Results in the NRT**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2740 (December 2003), amended LR 31:2762 (November 2005), repealed LR 34:

**§519. Inclusion of Schools**

A. - I. ...

J. Beginning in 2007, any school that does not have a district feeder pattern must have at least 40 FAY students for 2 consecutive academic years to have an SPS (Baseline or Growth) calculated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2741 (December 2003), amended LR 31:1512 (July 2005), LR 32:1022 (June 2006), LR 34:

**Chapter 24. Recovery School District**

**§2401. Recovery School District**

A. ...

1. The LEA fails to submit a reconstitution plan for a school in AUS 4 to BESE for approval.

2. - 4. ...

B. A school that enters the Recovery School District under R.S. 17:10.5 shall remain until:

B.1. - C.3. ...

D. Schools entering the RSD under the provisions of R.S. 17:10.7 shall exit as provided in the statute.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1028 (June 2006), amended LR 34:

**Family Impact Statement**

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

Interested persons may submit written comments until 4:30 p.m., January 9, 2008, to Nina A. Ford, Board of

Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Bulletin 111—The Louisiana School,  
District, and State Accountability System  
School Performance**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

Proposed changes in Bulletin 111 delete mention of the obsolete means by which the criterion-referenced and norm-referenced assessments were calculated in prior years. Additionally, proposed changes also clarify the testing population requirements that schools without a district feeder pattern must meet in order to have Baseline and/or Growth School Performance Scores calculated (at least 40 full-academic-year students for 2 consecutive academic years). Additionally, proposed changes specify that existing rule regarding school exit criteria from the Recovery School District (RSD) in Chapter 24(B) are per R.S. 17:10.5 and that exit criteria for schools that enter RSD per R.S. 17:10.7 are as provided in the statute.

There are no estimated implementation costs (savings) to state or local governmental units as a result of these changes.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There will be no estimated costs and/or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition and employment.

Beth Scioneaux  
Deputy Superintendent  
0711#055

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Board of Elementary and Secondary Education**

**Bulletin 118—Statewide Assessment Standards and Practices (LAC 28:CXI.305 and 1801)**

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 118—Statewide Assessment Standards and Practices*: §305. Test Security Policy and §1801. End-of-Course Tests. Bulletin 118 contains the State Board of Elementary and Secondary Education (SBESE) and the Division of Standards, Assessments, and Accountability (DSAA) test policy rules, guidelines, and procedures for easy access during statewide test administration.

The document will provide new and updated statewide test information and provide easy access to that information.

It was necessary to revise the bulletin at this time to incorporate guidelines for usage of the statewide online assessment data systems and update the names of content areas to be assessed through EOCT testing.

## **Title 28**

### **EDUCATION**

#### **Part CXI. Bulletin 118—Statewide Assessment Standards and Practices**

#### **Chapter 3. Test Security**

#### **§305. Test Security Policy**

A. - A.14.a. ...

i. LEAP<sub>data</sub> Query System. Principals should contact their DTC or Backup DTC for assistance in training teachers. After training, all school users (e.g., teachers, counselors, test coordinators) must read and sign the security agreement and return it to the principal. Signed security agreements are valid until the DTC receives notification that the Security Agreement available online has been revised. A new security agreement should be signed by all users each year after the *new* password letters for schools and districts are automatically generated in August. If a breach in security occurs, principals should immediately contact the DTC or the backup DTC for a replacement password. Principals should always contact their DTC or backup DTC for assistance and training.

b. ...

i. LEAP<sub>web</sub> Reporting System. At the school level, only principals (not teachers) and their designated school personnel (test coordinators, counselors, or office staff with whom the principal shares his/her PIN) should have access to the system and must sign a security agreement. Signed security agreements are valid until the DTC receives notification that the Security Agreement available online has been revised. A new security agreement should be signed by all users each year after the *new* password letters for schools and districts are automatically generated in August. If a breach in security occurs, principals should immediately contact the DTC or the backup DTC for a replacement password. Principals should always contact their DTC or Backup DTC for assistance and training..

b.ii. - c. ...

i. EAGLE System. Principals should contact their district designee, DTC, Backup DTC, or District Curriculum Supervisor for assistance in training teachers. After training, all users (e.g., teachers, counselors, test coordinators) must read and sign the security agreement and return it to the principal. Signed security agreements are valid until the DTC receives notification that the Security Agreement available online has been revised. A new security agreement should be signed by all users each year after the *new* password letters for schools and districts are automatically generated in August. Keep copies signed by all school users on file at the school. If a breach in security occurs, principals should immediately contact the District Designee, District Test Coordinator, or Backup District Designee for a replacement password. Principals should always contact their district designee, DTC, Backup DTC, or District Curriculum Supervisor for assistance and training.

d. All users who have access to these systems and leave their positions at a district or school site must not use or share the password.

15. - 17. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.7 (C) (G).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Office of Student and School Performance, LR 31:1528 (July 2005), amended LR 32:233 (February 2006), LR 33:255 (February 2007), LR 33:424 (March 2007), LR 33:2033 (October 2007), LR 34:

#### **Chapter 18. End-of-Course Tests**

#### **§1801. Description**

A. The tests which are both criterion-referenced and standards-based assessments will be available online to high school students beginning fall 2007. The tests will be phased in over a period of five years beginning with Algebra I. In the first years of administration, participation will be voluntary by districts. Policies regarding the use of EOCT results shall be determined by the district's local pupil progression plan. The tests measure the knowledge and skills a student should have mastered by the end of the course. The results of the EOCT will help ensure that all Louisiana students have access to a rigorous curriculum that meets high academic standards. The tests will assess student learning in the high school courses:

1. - 2. ...

3. English II;

4. English III;

5. - 7. ...

8. Free Enterprise; and

9. Physical Science.

B. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 33:258 (February 2007), amended LR 34:

#### **Family Impact Statement**

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the State Board Office which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights or parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

Interested persons may submit written comments until 4:30 p.m., January 9, 2008, to Nina A. Ford, Board of

Weegie Peabody  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Bulletin 118—Statewide Assessment  
Standards and Practices**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed rule makes changes to Chapter 3: new language is added to the policy for each of the three online statewide assessment data systems, LEAP*data*, LEAP*web*, and EAGLE. The proposed rule change will have no implementation cost to state or local governmental units.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There will be no effect on revenue collections at the state or local governmental levels.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

There should be no effect on costs and/or economic benefits to directly affected persons or non-governmental groups.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

There should be no impact on competition and employment.

Beth Scioneaux  
Deputy Superintendent  
0711#058

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Board of Elementary and Secondary Education**

Bulletin 746—Louisiana Standards for State Certification of School Personnel  
(LAC 28:CXXXI.347, 401, 403, 410, and 421)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 746—Louisiana Standards for State Certification of School Personnel*: §347, Junior Reserve Officers Training Corps Instructor (ROTC) (formerly §410). This revision will move the current policy for Ancillary certification as a Junior Reserve Officers Training Corps Instructor (ROTC) from Chapter 4, Subchapter A, §410 to Chapter 3, Subchapter C, §347 since (ROTC) is a teaching area.

In addition, other technical changes are being made to Chapter 4, Ancillary School Services Certificates, Subchapter A, Child Nutrition Program Supervisor and Subchapter B, School Therapists will be removed and the Section title of §403 will be changed to Child Nutrition Program Supervisor.

**Title 28  
EDUCATION**

**Part CXXXI. Bulletin 746—Louisiana Standards for State Certification of School Personnel**

**Chapter 3. Teaching Authorizations and Certifications**

**Subchapter C. Ancillary Teaching Certificates**

**§347. Junior Reserve Officers Training Corps Instructor (ROTC) (Formerly §410)**

A. An ancillary certificate issued in ROTC authorizes an individual to teach Junior ROTC.

B. Provisional Certification: Valid for five years.

**1. Eligibility Requirements**

a. Be retired from active duty in the retired grades of E-6 through E-9, WO-1 through CWO-5, 03 through 06; and

b. official recommendation by appropriate branch of the military service with certification by the appropriate Department of Defense.

2. Renewal Guidelines. May be renewed upon request of the Louisiana employing authority.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

**Chapter 4. Ancillary School Services Certificates**

**§401. Introduction**

A. An individual must have an official authorization from the state to provide services to children in a Louisiana school setting. An ancillary certificate allows a qualified person who is not a certified teacher to provide such services. The holder of an ancillary certificate is authorized to perform only those services that are specifically stated on the certificate in the school systems of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1807 (October 2006), repromulgated LR 34:

**Subchapter A. Child Nutrition Program Supervisor**

**§403. Child Nutrition Program Supervisor**

A. Child Nutrition Program Supervisor—valid for life with continuous service.

B. - E.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1807 (October 2006), amended LR 33:280 (February 2007), LR 34:

**§410. Junior Reserve Officers Training Corps**

**Instructor (ROTC) □**

A. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:281 (February 2007), repromulgated LR 33:1617 (August 2007), repealed LR 34:

## Subchapter B. School Therapists

### §421. Overview

A. School Art Therapist—Valid as long as holder remains in the same school system.

A.1. - F.2.b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1811 (October 2006), amended LR 34:

#### Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights or parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? No.

Interested persons may submit written comments until 4:30 p.m., January 9, 2008, to Nina Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody  
Executive Director

#### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

##### RULE TITLE: Bulletin 746—Louisiana Standards for State Certification of School Personnel

#### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

This revision will move the current policy for Ancillary certification as a Junior Reserve Officers Training Corps Instructor (ROTC) from Chapter 4, Subchapter A, §410 to Chapter 3, Subchapter C, §347. The adoption of this policy will cost the Department of Education approximately \$700 (printing and postage) to disseminate the policy.

#### II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

This policy will have no effect on revenue collections.

#### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There are no estimated costs and/or economic benefits to directly affected persons or non-governmental groups.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This policy will have no effect on competition and employment.

Beth Scioneaux  
Deputy Superintendent  
0711#057

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

#### NOTICE OF INTENT

##### Student Financial Assistance Commission Office of Student Financial Assistance

Scholarship/Grant Programs—Prevention of Financial Peril  
(LAC 28:IV.301, 505, 1101, 1103, 1107,  
1201-1213, 1301, 1401-1419, 1701)

The Louisiana Student Financial Assistance Commission (LASFAC) announces its intention to amend its Scholarship/Grant rules (R.S. 17:3021-3025, R.S. 3041.10-3041.15, R.S. 17:3042.1, and R.S. 17:3048.1).

This rulemaking will clarify the amount of the award and revise the application procedures and enrollment requirements for the Rockefeller Wildlife Scholarship Program; clarify the initial eligibility requirements and to provide alternative eligibility requirements for displaced students applying for a GO Grant; clarify that participation in Leveraging Education Assistance Partnership (LEAP) is limited to degree seeking students; and, for the Dual Enrollment Program, provide alternative eligibility requirements for students who want to enroll in work skill courses and were prevented from taking the PLAN by natural disasters, clarify who is a first time student, allow use of the SAT and require the student to meet the postsecondary institution's pre-requisite requirements for an ACT or SAT to enroll in academic mathematics and English courses.

The proposed Rule has no known impact on family formation, stability, or autonomy, as described in R.S. 49:972 (SG0891NI).

The full text of this proposed Rule may be viewed in the Emergency Rule portion of this edition of the *Louisiana Register*.

Interested persons may submit written comments on the proposed changes (SG0891NI) until 4:30 p.m., December 10, 2007, to Melanie Amrhein, Executive Director, Office of Student Financial Assistance, P.O. Box 91202, Baton Rouge, LA 70821-9202.

George Badge Eldredge  
General Counsel

#### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

##### RULE TITLE: Scholarship/Grant Programs—Prevention of Financial Peril

#### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed changes are required to correct identified discrepancies in the Scholarship/Grant Program Rules for

several programs administered by the agency. Some of these changes affect the new Louisiana Go Grant and Dual Enrollment Programs. The proposed changes primarily clarify the rules for the affected programs and do not significantly change the eligibility criteria for any of the programs. The changes should keep program costs within the current appropriated levels.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Revenue collections of state and local governments will not be affected by the proposed changes.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The programs affected by these changes allow students to seek post-secondary education. The higher level of education or technical training for students will have a positive impact on their earning potential and make them more marketable in the job market, thus eligible for higher paying jobs. This will provide Louisiana employers a better-educated workforce and may also attract out-of-state employers to Louisiana thus providing additional better paying jobs.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The programs affected by these changes allow students to seek post-secondary education. Any increase in the number of students attending post-secondary education will result in an increase in the number of educated/trained workers in the state and that will have a positive impact on competition and employment.

George B. Eldredge  
General Counsel  
0710#015

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Environmental Quality Office of the Secretary

Incorporation by Reference of 40 CFR 63,  
(LAC 33:III.501, 3003, and 5122)(AQ290ft)

Editor's Note: This Notice of Intent is being repromulgated in its entirety to correct an error. The public hearing and interested parties information were omitted from the initial publication in the October 20, 2007 edition of the *Louisiana Register* on page 2215.

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air regulations, LAC 33:III.501, 3003, and 5122 (Log #AQ290ft).

This proposed rule is identical to federal regulations found in 70 FR 55568-55581, September 22, 2005, and 40 CFR 63, Subpart DDDDD, which are applicable in Louisiana. For more information regarding the federal requirements, contact the Regulation Development Section at (225) 219-3550 or Box 4302, Baton Rouge, LA 70821-4302. No fiscal or economic impact will result from the proposed rule; therefore, the rule will be promulgated in accordance with R.S. 49:953(F)(3) and (4).

This rule repeals the department's incorporation by reference of 40 CFR 63, Subpart DDDDD—National Emission Standards for Hazardous Air Pollutants for

Industrial, Commercial, and Institutional Boilers and Process Heaters (hereafter, the Boiler MACT) and the September 22, 2005, revisions to the definitions of *commercial and industrial solid waste incineration (CISWI) unit, commercial or industrial waste, and solid waste* found in 40 CFR 60.2265 and 60.2875 (hereafter, the CISWI Definitions Rule). The department incorporated by reference the provisions of the revisions to the definitions in 40 CFR 60.2265 and 60.2875 at LAC 33:III.3003, and the Boiler MACT at LAC 33:III.5122.A. On June 8, 2007, the U.S. Court of Appeals for the District of Columbia Circuit vacated the Boiler MACT and the CISWI Definitions Rule (*Natural Resources Defense Council v. EPA*, D.C. Cir., No. 04-1385). The Court made its ruling effective on July 30, 2007.

In sum, the Court concluded that EPA's definition of "commercial or industrial waste" was too narrow in scope, thereby improperly limiting the number of solid waste incineration units subject to Section 129 of the Clean Air Act. Thus, the standard to which a number of sources will ultimately be subject—whether it be the "re-promulgated" Boiler MACT, federal rules for commercial and industrial solid waste incineration units (i.e., 40 CFR 60, Subpart CCCC), or Louisiana's §111(d) plan implementing 40 CFR 60, Subpart DDDD (69 FR 9949-9954, March 3, 2004)—is ambiguous at best and not likely to be resolved in the near term. Prior to the court's ruling, the department incorporated requirements of the rules into air operating permits. In light of the ruling, the department is seeking to maintain consistency with the federal rules and to provide the public with information regarding the status of existing permit conditions citing the vacated federal provisions. The basis and rationale for this rule are to amend the regulations to be identical to federal rules in response to the Court ruling vacating the Boiler MACT and the CISWI Definitions Rule.

This proposed rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This proposed rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

The full text of this proposed Rule may be viewed in the Emergency Rule portion of this edition of the *Louisiana Register* (October 20, 2007).

A public hearing will be held on November 28, 2007, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 North Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Judith A. Schuerman, Ph.D., at the address given below or at (225) 219-3550. Parking in the Galvez Garage is free with a validated parking ticket.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by AQ290ft. Such comments must be received no later than November 28, 2007, at 4:30 p.m., and should be sent to Judith A. Schuerman, Ph.D., Office of the Secretary, Legal Affairs Division, Box 4302, Baton Rouge, LA 70821-4302 or to FAX (225) 219-3582 or by e-mail to [judith.schuerman@la.gov](mailto:judith.schuerman@la.gov). The comment period for this rule ends on the same date as

the public hearing. Copies of this proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of AQ290ft. This regulation is available on the Internet at [www.deq.louisiana.gov/portal/tabid/1669/default.aspx](http://www.deq.louisiana.gov/portal/tabid/1669/default.aspx).

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 645 N. Lotus Drive, Suite C, Mandeville, LA 70471.

Herman Robinson, CPM  
Executive Counsel

0711#024

## NOTICE OF INTENT

**Office of the Governor  
Division of Administration  
Racing Commission**

Pick N (LAC 35:XIII.Chapter 116)

The Louisiana State Racing Commission hereby gives notice that it intends to amend LAC 35:XIII.116 "Pick Four," to revise all Sections of the existing "Pick Four" Rule to include "Pick N" wagering.

This proposed Rule has no known impact on family formation, stability, and/or autonomy as described in R.S. 49:972.

The full text of this proposed Rule may be viewed in the Emergency Rule portion of this edition of the *Louisiana Register*.

The domicile office of the Louisiana State Racing Commission is open from 8:30 a.m. to 5 p.m., and interested parties may contact Charles A. Gardiner III, executive director, or Larry Munster, assistant executive director, at (504) 483-4000 (holidays and weekends excluded), or by fax (504) 483-4898, for more information. All interested persons may submit written comments relative to this proposed Rule through December 14, 2007, to 320 North Carrollton Avenue, Suite 2-B, New Orleans, LA 70119-5100.

Charles A. Gardiner III  
Executive Director

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Pick N

### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There are no anticipated costs or savings to state or local governmental units associated with this rule, other than one-time costs directly associated with its publication.

### II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

As a result of this action, self-generated revenue collections may potentially increase due to increased wagering activity.

Any potential increase in self-generated revenue collections is indeterminable, but not anticipated to be significant.

### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Passage of this rule could result in economic benefits to racing associations if wagering activity increases due to additional wagering options.

### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Passage of this rule should not affect employment. However, it should place Louisiana tracks in a more favorable competitive environment with other tracks around the country.

Charles A. Gardiner  
Executive Director  
0711#019

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

**Department of Health and Hospitals  
Board of Embalmers and Funeral Directors**

Prepaid Funeral Services or Merchandise

(LAC 46:XXXVII.1705 and 1707)

The Board of Embalmers and Funeral Directors proposes to amend LAC 46:XXXVII.Chapter 17 pursuant to the authority granted by R.S. 37:840 and in accordance with the provisions of the Administrative Procedure Act, R.S. 40:950 et seq. The board finds it necessary to add provisions to the rules, regulations and procedures relative to providing useful guidance and information for the purpose of improving regulatory compliance and to enhance understanding of these changes.

## Title 46 PROFESSIONAL AND OCCUPATIONAL STANDARDS

### Part XXXVII. Embalmers and Funeral Directors Chapter 17. Prepaid Funeral Services or Merchandise §1705. Change of Ownership of the Establishment (as defined in §1101)

A. Within 60 days of a change of ownership of a funeral establishment, the owner(s) of said establishment shall notify all pre-need account holders by certified mail, return receipt requested of the change in ownership. The notification shall request written authorization for one of the following options:

1. maintain their current pre-need trust account with the new owner(s);
2. request a refund of the principal deposited and the interest accrued in the pre-need trust account;
3. change the named beneficiary of the insurance policy purchased to a new funeral establishment, so as to fund a pre-need;
4. request that the insurance policy be cashed in. However, the pre-need account holder should be advised to check the financial consequences of this option with the insurance company.

AUTHORITY NOTE: Adopted in accordance with R.S. 37:840.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Embalmers and Funeral Directors, LR 34:

**§1707. Right to Pre-Need Funds; Ownership of Insurance Policies**

A. The funeral establishment shall not have the right to take possession of any pre-need funds until such time as the service is performed after death. Additionally, the funeral establishment shall not be named as the owner of a life insurance policy for a pre-need funeral.

AUTHORITY NOTE: Adopted in accordance with R.S. 37:840.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Embalmers and Funeral Directors, LR 34:

**Family Impact Statement**

The proposed additions to the Rules of the board, Professional and Occupational Standards for Embalmers and Funeral Directors should not have any known or foreseeable impact on any family as defined by R.S. 49:972.D or on family formation, stability and autonomy. Specifically, there should be no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. a family's earnings and budget;
5. the behavior and personal responsibility of children; or
6. the family's ability or that of the local government to perform the function as contained in the proposed Rule.

Interested persons may submit written comments to Dawn Scardino, Executive Director, Louisiana State Board of Embalmers and Funeral Directors, P.O. Box 8757, Metairie, LA 70011-8757. Written comments must be submitted to and received by the board within 30 days of this notice. A request pursuant to R.S. 49:953(A)(2) for oral presentation, argument, or public hearing must be made in writing and received by the board within 20 days of the date of this notice.

Dawn Scardino  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

**RULE TITLE: Prepaid Funeral Services or Merchandise**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

There is no anticipated increase in expenditures or savings due to these proposed rules except for the publication of the proposed rules estimated at \$350 in FY 07-08.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There is no estimated effect on revenue collections of state or local governmental units.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

The proposed rule will add more safeguards to pre-need funds/insurance policies deposited with funeral establishments to cover the cost of merchandise and services to be supplied upon the death of the consumers and to keep consumers aware of where their funds are deposited. The proposed rule will require funeral establishments to send certified mail, return receipt requested notification to consumers who have pre-need

arrangements that will increase the cost of doing business and create an increase in paperwork. Total costs incurred will depend on the number of pre-need arrangements held by the establishment. Additionally, funeral establishments will have to ascertain if naming the consumer as owner of the policy will cause financial problems and adjust ownership accordingly.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

These proposed additions are not expected to have a significant effect on competition and/or employment.

Dawn Scardino  
Executive Director  
0711#035

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Board of Wholesale Drug Distributors**

**License Procedure  
(LAC 46:XCI.103, 301, 309, and 311)**

The Louisiana Board of Wholesale Drug Distributors proposes to amend LAC 46:XCI.103, 301, 309, and 311 in accordance with the provisions of the Administrative Procedures Act, R.S. 49:950 et seq., and R.S. 37:3467 et seq., of the Louisiana Board of Wholesale Drug Distributors Practice Act. These proposed Rule amendments will assist and support the board in its ability to license and regulate entities in the wholesale distribution of legend drugs and medical devices in/within the state. The proposed Rule amendments have no known impact on family formation, stability, and autonomy as described in R.S. 49:972. The proposed amendments to the Rule are set forth below.

**Title 46  
PROFESSIONAL AND OCCUPATION STANDARDS  
Part XCI. Wholesale Drug Distributors**

**Chapter 1. General Provisions**

**§103. Definition**

A. As used in this regulation, unless the context otherwise requires:

\*\*\*

*Applicant or Responsible Party*—an individual designated by the applying or licensed entity as the person responsible for facility operations and/or licensing for the applying or licensed facility location.

\*\*\*

*Drug or Device*—any legend drug or legend device intended for use by humans which can be dispensed by prescription or order of a licensed practitioner and whose labeling contains the legend "Caution: Federal law prohibits dispensing without a prescription." or "Caution: Federal law restricts this device to sale by or on the order of a (*licensed healthcare practitioner*)." or "Rx only."

\*\*\*

*Legend Drug*—

a. a drug limited by Section 503(b)(1) of the federal Food, Drug, and Cosmetic Act to being dispensed by or upon a licensed practitioner's prescription because the drug is:

- i. habit-forming;
- ii. toxic or having potential for harm;

iii. limited in its use to use under a practitioner's supervision by the new drug application for the drug.

b. The product label of a legend drug is required to contain the statement "Rx Only" or "CAUTION: FEDERAL LAW PROHIBITS DISPENSING WITHOUT A PRESCRIPTION".

c. ...

\*\*\*

*Medical Gas*—any pure gas or gas mixture packaged as any liquefied (cryogenic) or compressed gas (vaporized) that is designated as a drug product.

\*\*\*

*Off-Site Storage Facility*—a structure, warehouse, or building used by a licensed wholesale drug or device distributor strictly for storage of legend drugs or devices.

\*\*\*

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3461-3482.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Wholesale Drug Distributors, LR 18:381 (April 1992), amended LR 29:1479 (August 2003), LR 32:394 (March 2006), LR 34:

### **Chapter 3. Wholesale Drug or Device Distributors**

#### **§301. Licensing, Renewal and Reinstatement**

##### **Requirements**

A. Every wholesale drug or device distributor who engages in the wholesale distribution of drugs or devices, to include without limitation, manufacturing in this state, shipping in or into this state or selling or offering to sell in or into this state, shall register annually with the board by application for a license on a form furnished by the board and accompanied by the license fee.

1. The board shall require a separate license for each facility or physical location directly or indirectly owned or operated by the same business entity or for a parent entity with divisions, subdivisions, subsidiaries, and/or affiliate companies when operations are conducted at more than one location and there exists joint ownership and control among all the entities.

2. Parent entity must license all divisions, subdivisions, subsidiaries, and/or affiliate companies owned by the parent company that sell and/or ship legend drugs or devices in or into Louisiana.

B. - C. ...

D. Each application for the renewal of the license must be made on or before December 31 of each year.

1. If a license is not timely and properly renewed on or before the December 31 expiration date, a person may apply for reinstatement of the expired license within one year, or by the next December 31 after expiration of the license, upon timely and properly submitting an application to the board, and other pertinent information which may be requested, as well as payment of the renewal fee and the reinstatement fee.

2. During the period the license is expired until reinstatement of the expired license, the person may not lawfully operate as a wholesale drug or device distributor in Louisiana.

3. If a license is expired beyond one year, a person may apply for reinstatement of the expired license by submitting an application to the board, along with any pertinent information and documents which may be

required, as well as payment of the application fee and the reinstatement fee.

E. - I.1. ...

J. If a licensed in-state wholesale drug or device distributor has an additional off-site storage facility, the off-site storage facility may operate under the current wholesale drug or device distribution license held by the licensee as long as the off-site storage facility is in compliance with §309A.1 of these regulations and has temperature monitoring and an alarm system and the off-site storage facility does not physically receive or distribute legend drugs or devices from its location.

K. A license shall not be issued by the board for any wholesale drug or device distributor to operate from or out of a dwelling, building, or property zoned as residential.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3461-3482.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Wholesale Drug Distributors, LR 18:382 (April 1992), amended LR 29:1479 (August 2003), LR 32:396 (March 2006), LR 34:

#### **§309. Storage and Handling Requirements**

A. - A.3.a. ...

b. Appropriate electromechanical or electronic temperature recording equipment, devices, and logs approved by the board shall be utilized to document proper storage of drugs or devices. Spring-loaded or mercury driven temperature monitoring devices are not approved by the board for use in monitoring and recording product temperature.

3.c - 5.d. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3461-3482.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Wholesale Drug Distributors, LR 18:382 (April 1992), amended LR 29:1480 (August 2003), LR 32:398 (March 2006), LR 34:

#### **§311. Drug or Device Distribution Recordkeeping**

A. - C. ...

D. Copies of current licenses for customers who are authorized by law or regulation to procure or possess drugs or devices shall be maintained for all customers that are shipped or sold drugs or devices. If customer licenses are maintained off site, a list of customer names, addresses, license numbers, and license expiration dates shall be maintained at the licensed distribution location for all customers that are shipped or sold drugs or devices.

E. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3461-3482.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Wholesale Drug Distributors, LR 18:383 (April 1992), amended LR 29:1480 (August 2003), LR 32:399 (March 2006), LR 34:

Interested parties may submit written comments to John Liggi, Executive Director, Louisiana Board of Wholesale Drug Distributors, 12046 Justice Avenue, Suite C, Baton Rouge, LA 70816. Comments will be accepted through the close of business on Thursday, December 20, 2007. If it becomes necessary to convene a public hearing to receive comments in accordance with the Administrative Procedures Act, the hearing will be held on Thursday, December 27, 2007, at 11 a.m. at the office of the Louisiana Board of

Wholesale Drug Distributors, 12046 Justice Avenue, Suite C,  
Baton Rouge, LA.

Kimberly B. Barbier  
Executive Assistant

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: License Procedure**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO  
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

There will be no costs or savings to state or local government units, except for those associated with publishing the rule amendment (estimated at \$400 in FY 2008). Licensees will be informed of this rule change via the Board's regular newsletter or other direct mailings, which result in minimal costs to the Board.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE  
OR LOCAL GOVERNMENTAL UNITS (Summary)**

There will be no effect on revenue collections of state or local governmental units as there will not be an increase in fees resulting from the amendment.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO  
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL  
GROUPS (Summary)**

There are no anticipated costs and/or economic benefits to directly affected persons or non-governmental groups. The proposed rule amendments define new and clarify existing terms used within the rules for practice and procedure for wholesale drug distributors (approximately 195 in-state and 1,215 out-of-state), and further clarify current licensing procedures and practices for the wholesale distribution of legend drugs or devices in/within Louisiana.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT  
(Summary)**

No impact on competition and employment is anticipated as a result of the proposed rule change.

Kimberly Barbier  
Executive Assistant  
0711#051

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Office of the Secretary  
Bureau of Health Services Financing**

Twelve-Months Continuous Eligibility  
(LAC 50:III.2525)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to adopt LAC 50:III.2525 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Section 4731 of the Balanced Budget Act (BBA) of 1997, Public Law 105-33, established provisions which allowed states to guarantee Medicaid eligibility for children, under age 19, for up to 12 months from the date of determination as long as eligibility did not extend beyond the child's nineteenth birthday. Act 128 of the First Extraordinary Session of the 1998 Louisiana Legislature authorized the

department to adopt the guaranteed eligibility option established in §4731 of the BBA. In compliance with Act 128, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted provisions establishing 12 months of continuous Medicaid eligibility for children under the age of 19, with the exception of children who were eligible under the medically needy category of assistance (*Louisiana Register*, Volume 24, Number 10). The department now proposes to amend the provisions of the October 20, 1998 Rule governing 12 months of continuous eligibility to terminate this guaranteed eligibility option for children whose Medicaid eligibility is based on a disability rather than their status as a child.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability or autonomy as described in R.S. 49:972.

**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part III. Eligibility**

**Subpart 3. Eligibility Groups and Factors**

**Chapter 25. Eligibility Factors**

**§2525. Twelve-Month Continuous Eligibility**

A. Act 128 of the First Extraordinary Session of the 1998 Louisiana Legislature authorized the department to adopt the guaranteed eligibility option for children, pursuant to §4731 of the Balanced Budget Act (BBA) of 1997. These provisions allow states to guarantee Medicaid eligibility for children, under age 19, for up to 12 months from the date of determination.

B. Children who are under age 19 and certified in a child-related or family-related category of assistance are entitled to 12 months of continuous Medicaid eligibility as long as eligibility does not extend beyond the child's nineteenth birthday.

C. Twelve months of continuous eligibility is not available to children who are:

1. eligible for an SSI-related category of assistance;
2. eligible for the Medically Needy Program; or
3. certified under fraudulent or misleading circumstances.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:

Implementation of the provisions of this Rule shall be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

Interested persons may submit written comments to Jerry Phillips, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Thursday, December 27, 2007, at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written

comments is 4:30 p.m. on the next business day following the public hearing.

Roxane A. Townsend, M.D.  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Twelve-Months Continuous Eligibility**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

It is anticipated that implementation of this proposed rule will have a minimal and undeterminable savings to the Medicaid Program in FY 07-08, FY 08-09 and FY 09-10. It is anticipated that \$272 (\$136 SGF and \$136 FED) will be expended in FY 07-08 for the state's administrative expense for promulgation of this proposed rule and the final rule.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

It is anticipated that the implementation of this proposed rule will not affect federal revenue collections other than the federal share of the promulgation costs for FY 07-08. It is anticipated that \$136 will be collected in FY 07-08 for the federal share of the expense for promulgation of this proposed rule and the final rule.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

This rule proposes to amend the provisions governing 12-Months Continuous Eligibility to terminate this guaranteed eligibility option for children whose Medicaid eligibility is based on a disability rather than their status as a child. It is anticipated that approximately 95 children may be disenrolled from the Medicaid Program as a result of the implementation of this proposed Rule.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

This rule has no known effect on competition and employment.

Jerry Phillips  
Medicaid Director  
0711#067

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Office of the Secretary  
Office of Aging and Adult Services**

**Home and Community-Based Services Waivers—Elderly and Disabled Adults Waiver—Direct Service Professionals Wage Enhancement (LAC 50:XXI.Chapter 91)**

The Department of Health and Hospitals, Office of Aging and Adult Services proposes to adopt LAC 50:XXI.Chapter 91 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950, et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted provisions governing the Elderly and Disabled Adults (EDA) Waiver (*Louisiana Register*, Volume 28, Number 9). The department promulgated an Emergency Rule to adopt a

reimbursement methodology for the EDA Waiver and provisions to implement an hourly wage pass-through, hereafter referred to as a wage enhancement, payment to providers for direct care staff (*Louisiana Register*, Volume 33, Number 2). The department promulgated an Emergency Rule to amend the February 9, 2007 Emergency Rule to further clarify the provisions governing the wage enhancement payment (*Louisiana Register*, Volume 33, Number 9). This proposed Rule is being promulgated to continue the provisions of the September 20, 2007 Emergency Rule.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability or autonomy as described in R.S. 49:972.

**Title 50**

**PUBLIC HEALTH-MEDICAL ASSISTANCE  
Part XXI. Home and Community Based Services  
Waivers**

**Subpart 7. Elderly and Disabled Adults Waiver**

**Chapter 91. Reimbursement**

**§9101. Reimbursement Methodology**

A. Reimbursement for EDA Waiver services shall be a prospective flat rate for each approved unit of service provided to the recipient.

B. Direct Support Professionals Wage Enhancement.

1. Effective February 9, 2007, an hourly wage enhancement payment in the amount of \$2 will be reimbursed to providers for full-time equivalent (FTE) direct support professionals who provide home and community-based waiver services to Medicaid recipients. Direct support professionals are persons who deliver direct care services such as assistance with the activities of daily living.

a. At least 75 percent of the wage enhancement shall be paid in the aggregate to the direct support professionals as wages. If less than 100 percent of the enhancement is paid in wages, the remainder, up to 25 percent shall be used to pay employer-related taxes, insurance and employee benefits.

2. Effective September 20, 2007, the minimum hourly rate paid to direct support professionals shall be the federal minimum wage in effect on February 20, 2007 plus 75 percent of the wage enhancement or the current federal minimum wage, whichever is higher.

3. Providers shall be required to submit a certified wage register to the department verifying the direct support professionals' gross wages for the quarter ending June 30, 2005. The wage register will be used to establish a payroll baseline for each provider. It shall include the following information:

- a. gross wage paid to the direct support professional(s);
- b. total number of direct support hours worked; and
- c. the amount paid in employee benefits.

4. A separate report shall be submitted for paid overtime.

5. The provider shall submit quarterly wage reports that verify that the 75 percent wage enhancement has been paid to the appropriate staff.

6. The provider shall submit a report, according to the Department's specifications, that will be used to measure the effectiveness of the wage enhancement.

7. The wage enhancement payments reimbursed to providers are subject to audit by the department.

8. Noncompliance or failure to demonstrate that the wage enhancement was paid directly to direct support professionals may result in:

- a. forfeiture of eligibility for wage enhancement payments;
- b. recoupment of previous wage enhancement payments;
- c. Medicaid fraud charges; and
- d. disenrollment in the Medicaid Program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:

Implementation of the provisions of this Rule shall be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

Interested persons may submit written comments to Hugh Eley, Office of Aging and Adult Services, P.O. Box 2031, Baton Rouge, LA 70821-2031. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Thursday, December 27, 2007 at 9:30 a.m. in Room 118, Bienville Building, 628 North 4th Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Roxane A. Townsend, M.D.  
Secretary

#### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

#### **RULE TITLE: Home and Community-Based Services Waivers—Elderly and Disabled Adults Waiver—Direct Service Professionals Wage Enhancement**

##### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

It is anticipated that the implementation of this proposed rule will result in an estimated increase in expenses to the state of \$2,244,333 for FY 07-08, \$2,311,488 for FY 08-09, and \$2,380,832 for FY 09-10. It is anticipated that \$340 (\$170 SGF and \$170 FED) will be expended in FY 07-08 for the state's administrative expense for promulgation of this proposed rule and the final rule.

##### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

It is anticipated that the implementation of this proposed rule will increase federal revenue collections by approximately \$5,708,392 FY 07-08, \$5,879,469 for FY 08-09, and \$6,055,853 for FY 09-10. It is anticipated that \$170 will be expended in FY 07-08 for the federal administrative expenses for promulgation of this proposed rule and the final rule.

##### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

This rule, which continues the provisions of the February 9, 2007 Emergency Rule, proposes to amend the provisions governing the reimbursement methodology for the Elderly and Disabled Adults (EDA) Waiver program to implement an hourly wage pass-through, hereafter referred to as a wage enhancement, payment to providers for direct care staff (approximately 1,325,398 monthly units of service). It is anticipated that implementation of this proposed rule will increase program expenditures in the EDA program by approximately \$7,952,385 for FY 07-08, \$8,190,957 for FY 08-09 and \$8,436,685 for FY 09-10.

##### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

It is anticipated that the implementation of this rule will have a positive effect on competition and employment by assisting providers to recruit and retain sufficient direct care staff.

Jerry Phillips  
Medicaid Director  
0711#070

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

#### **NOTICE OF INTENT**

#### **Department of Health and Hospitals Office of the Secretary Office of Aging and Adult Services**

Personal Care Services—Long Term  
Personal Care Workers Wage Enhancement  
(LAC 50:XV.12917)

The Department of Health and Hospitals, Office of Aging and Adult Services proposes to amend LAC 50:XV.12917 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950, et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted provisions governing the coverage of personal care services as an optional service under the Medicaid State Plan (*Louisiana Register*, Volume 29, Number 6). The Department of Health and Hospitals, Office of Aging and Adult Services promulgated an Emergency Rule to amend the provisions of the June 20, 2003 Rule governing the reimbursement methodology for personal care services to implement an hourly wage pass-through, hereafter referred to as a wage enhancement, payment to providers for personal care workers (*Louisiana Register*, Volume 33, Number 2). The department subsequently amended the February 9, 2007 Emergency Rule to further clarify the provisions governing the wage enhancement payment (*Louisiana Register*, Volume 33, Number 9). This proposed rule is being promulgated to continue the provisions of the September 20, 2007 Emergency Rule.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability or autonomy as described in R.S. 49:972.

**Title 50**  
**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part XV. Services for Special Populations**

**Subpart 9. Personal Care Services**

**Chapter 129. Long Term Care**

**§12917. Reimbursement Methodology**

A. ...

B. Personal Care Workers Wage Enhancement.

1. Effective February 9, 2007, an hourly wage enhancement payment in the amount of \$2 will be reimbursed to providers for full-time equivalent (FTE) personal care workers who provide services to Medicaid recipients.

a. At least 75 percent of the wage enhancement shall be paid in the aggregate to personal care workers as wages. If less than 100 percent of the enhancement is paid in wages, the remainder, up to 25 percent shall be used to pay employer-related taxes, insurance and employee benefits.

2. Effective September 20, 2007, the minimum hourly rate paid to personal care workers shall be the federal minimum wage in effect on February 20, 2007 plus 75 percent of the wage enhancement or the current federal minimum wage, whichever is higher.

3. Providers shall be required to submit a certified wage register to the department verifying the personal care workers' gross wages for the quarter ending June 30, 2005. The wage register will be used to establish a payroll baseline for each provider. It shall include the following information:

- a. gross wage paid to the personal care worker(s);
- b. total number of personal care hours worked; and
- c. the amount paid in employee benefits.

4. A separate report shall be submitted for paid overtime.

5. The provider shall submit quarterly wage reports that verify that the 75 percent wage enhancement has been paid to the appropriate staff.

6. The provider shall submit a report, according to the department's specifications, that will be used to measure the effectiveness of the wage enhancement.

7. The wage enhancement payments reimbursed to providers shall be subject to audit by the department.

8. Noncompliance or failure to demonstrate that the wage enhancement was paid directly to personal care workers may result in:

- a. forfeiture of eligibility for wage enhancement payments;
- b. recoupment of previous wage enhancement payments;
- c. Medicaid fraud charges; and
- d. disenrollment in the Medicaid Program.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:913 (June 2003), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:

Implementation of the provisions of this Rule shall be contingent upon the approval of the U.S. Department of

Health and Human Services, Centers for Medicare and Medicaid Services.

Interested persons may submit written comments to Jerry Phillips, Department of Health and Hospitals, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Thursday, December 27, 2007 at 9:30 a.m. in Room 118, Bienville Building, 628 North 4th Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Roxane A. Townsend, M.D.  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Personal Care Services—Long Term  
Personal Care Workers Wage Enhancement**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

It is anticipated that the implementation of this proposed rule will result in an estimated increase in expenses to the state of \$7,380,163 for FY 07-08, \$7,601,393 for FY 08-09, and \$7,829,435 for FY 09-10. It is anticipated that \$340 (\$170 SGF and \$170 FED) will be expended in FY 07-08 for the state's administrative expense for promulgation of this proposed rule and the final rule.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

It is anticipated that the implementation of this proposed rule will increase federal revenue collections by approximately \$18,771,819 for FY 07-08, \$19,334,798 for FY 08-09, and \$19,914,842 for FY 09-10. It is anticipated that \$170 will be expended in FY 07-08 for the federal administrative expenses for promulgation of this proposed rule and the final rule.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

This rule, which continues the provisions of the September 20, 2007 Emergency Rule, proposes to amend the provisions governing the reimbursement methodology for personal care services to implement an hourly wage enhancement payment to providers for personal care workers (approximately 4,358,607 units of service per month). It is anticipated that implementation of this proposed rule will increase program expenditures in the personal care services program by approximately \$26,151,642 for FY 07-08, \$26,936,191 for FY 08-09 and \$27,744,277 for FY 09-10.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

It is anticipated that the implementation of this rule will have a positive effect on competition and employment by assisting providers to recruit and retain sufficient direct care staff.

Jerry Phillips  
Medicaid Director  
0711#068

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Health and Hospitals Office of the Secretary Office of Aging and Adult Services

Home and Community-Based Services Waiver—Adult Day  
Health Care—Direct Service Professionals Wage  
Enhancement (LAC 50:XXI.3109)

The Department of Health and Hospitals, Office of Aging and Adult Services proposes to amend LAC 50:XXI.3109 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950, et seq.

The Department of Health and Hospitals, Office of Aging and Adult Services adopted provisions governing the reimbursement methodology for the Adult Day Health Care (ADHC) Waiver (*Louisiana Register*, Volume 30, Number 9). The department promulgated an Emergency Rule to amend the provisions of the September 20, 2004 Rule governing the reimbursement methodology for the ADHC Waiver by increasing reimbursement to providers to implement a wage enhancement for direct care staff (*Louisiana Register*, Volume 33, Number 2). It is the intent that the wage enhancement be paid to the direct care staff. This proposed Rule is being promulgated to continue the provisions of the February 9, 2007 Emergency Rule.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability or autonomy as described in R.S. 49:972.

#### Title 50

#### PUBLIC HEALTH-MEDICAL ASSISTANCE

#### Part XXI. Home and Community Based Services

#### Waivers

#### Subpart 3. Adult Day Health Care

#### Chapter 31. Reimbursement

#### §3109. Provider Reimbursement

A. - B.7.a. ...

i. For dates of service on or after February 9, 2007, the facility-specific direct care price will be increased by \$1.11 to include a direct care service worker wage enhancement. It is the intent that this wage enhancement be paid to the direct care service workers.

B.7.b. - B.8.b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2048 (September 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:

Implementation of the provisions of this Rule shall be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

Interested persons may submit written comments to Hugh Eley, Office of Aging and Adult Services, P.O. Box 2031, Baton Rouge, LA 70821-2031. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Thursday, December 27, 2007 at 9:30 a.m. in Room 118, Bienville Building, 628 North 4th Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Roxane A. Townsend, M.D.  
Secretary

#### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

#### RULE TITLE: Home and Community-Based Services Waiver—Adult Day Health Care—Direct Service Professionals Wage Enhancement

#### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that the implementation of this proposed rule will result in an estimated increase in expenses to the state of \$35,960 for FY 07-08, \$36,934 for FY 08-09, and \$38,042 for FY 09-10. It is anticipated that \$204 (\$102 SGF and \$102 FED) will be expended in FY 07-08 for the state's administrative expense for promulgation of this proposed rule and the final rule.

#### II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed rule will increase federal revenue collections by approximately \$91,311 FY 07-08, \$93,945 for FY 08-09, and \$96,763 for FY 09-10. It is anticipated that \$102 will be expended in FY 07-08 for the federal administrative expenses for promulgation of this proposed rule and the final rule.

#### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This rule, which continues the provisions of the February 9, 2007 Emergency Rule, proposes to amend the provisions governing the reimbursement methodology for the Adult Day Health Care (ADHC) Program to implement an hourly wage enhancement payment to providers for direct care service workers (approximately 9,530 monthly units of service). It is anticipated that implementation of this proposed rule will increase program expenditures in the ADHC program by approximately \$127,067 for FY 07-08, \$130,879 for FY 08-09 and \$134,805 for FY 09-10.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this rule will have a positive effect on competition and employment by assisting providers to recruit and retain sufficient direct care staff.

Jerry Phillips  
Medicaid Director  
0711#072

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Health and Hospitals Office of the Secretary Office for Citizens with Developmental Disabilities

Home and Community-Based Services Waivers—Children's Choice—Direct Support Professionals Wage Enhancement (LAC 50:XXI.12101)

The Department of Health and Hospitals, Office for Citizens with Developmental Disabilities proposes to amend LAC 50:XXI.12101 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950, et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted provisions governing the reimbursement methodology for the Children's Choice Waiver (*Louisiana Register*, Volume 28, Number 9). The Department of Health and Hospitals, Office for Citizens with Developmental Disabilities promulgated an Emergency Rule which amended the provisions of the September 20, 2004 Rule governing the reimbursement methodology for the Children's Choice Waiver to implement an hourly wage pass-through payment to providers for direct care staff (*Louisiana Register*, Volume 33, Number 2). The department subsequently promulgated an Emergency Rule which amended the provisions of the February 9, 2007 Emergency Rule to also include a wage pass-through, hereafter referred to as a wage enhancement, payment for direct support professionals who provide Center-Based Respite services to Children's Choice recipients (*Louisiana Register*, Volume 33, Number 5). The department promulgated an Emergency Rule to amend the May 20, 2007 Emergency Rule to further clarify the provisions governing the wage enhancement payment (*Louisiana Register*, Volume 33, Number 9). This proposed Rule is being promulgated to continue the provisions of the September 20, 2007 Emergency Rule.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability or autonomy as described in R.S. 49:972.

#### Title 50

#### PUBLIC HEALTH-MEDICAL ASSISTANCE

#### Part XXI. Home and Community-Based Services Waivers

#### Subpart 9. Children's Choice

#### Chapter 121. Reimbursement

#### §12101. Reimbursement Methodology

A. - B.3. ...

#### 4. Direct Support Professionals Wage Enhancement.

a. Effective February 9, 2007, an hourly wage enhancement payment in the amount of \$2 will be reimbursed to providers for full-time equivalent (FTE) direct

support professionals who provide Family Support services to Children's Choice recipients.

b. Effective May 20, 2007, an hourly wage enhancement payment in the amount of \$2 will be reimbursed to providers for full-time equivalent (FTE) direct support professionals who provide Center-Based Respite services to Children's Choice recipients.

c. At least 75 percent of the wage enhancement shall be paid in the aggregate to direct support workers as wages. If less than 100 percent of the enhancement is paid in wages, the remainder, up to 25 percent shall be used to pay employer-related taxes, insurance and employee benefits.

d. Effective September 20, 2007, the minimum hourly rate paid to direct support professionals shall be the federal minimum wage in effect on February 20, 2007 plus 75 percent of the wage enhancement or the current federal minimum wage, whichever is higher.

e. Providers shall be required to submit a certified wage register to the department verifying the direct support professionals' gross wages for the quarter ending June 30, 2005. The wage register will be used to establish a payroll baseline for each provider. It shall include the following information:

i. gross wage paid to the direct support professional(s);

ii. total number of direct support hours worked; and

iii. the amount paid in employee benefits.

f. A separate report shall be submitted for paid overtime.

g. The provider shall submit quarterly wage reports that verify that the 75 percent wage enhancement has been paid to the appropriate staff.

h. The provider shall submit a report, according to the department's specifications, that will be used to measure the effectiveness of the wage enhancement.

i. The wage enhancement payments reimbursed to providers shall be subject to audit by the department.

j. Noncompliance or failure to demonstrate that the wage enhancement was paid directly to direct support professionals may result in:

i. forfeiture of eligibility for wage enhancement payments;

ii. recoupment of previous wage enhancement payments;

iii. Medicaid fraud charges; and

iv. disenrollment in the Medicaid Program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1987 (September 2002), amended by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 34:

Implementation of the provisions of this Rule shall be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

Interested persons may submit written comments to Kathy Kliebert, Office for Citizens with Developmental Disabilities, P.O. Box 3117, Baton Rouge, LA 70821-3117. She is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Thursday, December 27, 2007 at 9:30 a.m. in Room 118, Bienville Building, 628 North 4th Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Roxane A. Townsend, M.D.  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Home and Community-Based Services  
Waivers—Children's Choice—Direct Support  
Professionals Wage Enhancement**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO  
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

It is anticipated that the implementation of this proposed rule will result in an estimated increase in expenses to the state of \$283,122 for FY 07-08, \$291,441 for FY 08-09, and \$300,184 for FY 09-10. It is anticipated that \$340 (\$170 SGF and \$170 FED) will be expended in FY 07-08 for the state's administrative expense for promulgation of this proposed rule and the final rule.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE  
OR LOCAL GOVERNMENTAL UNITS (Summary)**

It is anticipated that the implementation of this proposed rule will increase federal revenue collections by approximately \$719,884 FY 07-08, \$741,305 for FY 08-09, and \$763,544 for FY 09-10. It is anticipated that \$170 will be expended in FY 07-08 for the federal administrative expenses for promulgation of this proposed rule and the final rule.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO  
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL  
GROUPS (Summary)**

This rule, which continues the provisions of the September 20, 2007 Emergency Rule, proposes to amend the provisions governing the reimbursement methodology for family support and center-based respite services in the Children's Choice Waiver program to implement an hourly wage enhancement payment, hereafter referred to as a wage enhancement, to providers for direct care service workers (approximately 167,111 monthly units of service). It is anticipated that implementation of this proposed rule will increase program expenditures in the Children's Choice program by approximately \$1,002,666 for FY 07-08, \$1,032,746 for FY 08-09 and \$1,063,728 for FY 09-10.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT  
(Summary)**

It is anticipated that the implementation of this rule will have a positive effect on competition and employment by assisting providers to recruit and retain sufficient direct care staff.

Jerry Phillips  
Medicaid Director  
0711#071

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Office of the Secretary  
Office for Citizens with Developmental Disabilities**

Home and Community-Based Services Waivers  
New Opportunities Waiver  
Direct Support Professionals Wage Enhancement  
(LAC 50:XXI.14301)

The Department of Health and Hospitals, Office for Citizens with Developmental Disabilities proposes to amend LAC 50:XXI.14301 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services implemented a new home and community based services waiver, the New Opportunities Waiver (NOW), designed to enhance the support services available to individuals with developmental disabilities (*Louisiana Register*, Volume 30, Number 6). The Department of Health and Hospitals, Office for Citizens with Developmental Disabilities promulgated an Emergency Rule to amend the provisions of the June 20, 2004 Rule governing the reimbursement methodology for the New Opportunities Waiver to implement a wage pass-through payment for direct support professionals who provide individual and family support services to NOW recipients (*Louisiana Register*, Volume 33, Number 2). The department amended the provisions of the February 9, 2007 Emergency Rule to also include a wage pass-through payment, hereafter referred to as a wage enhancement, for direct support professionals who provide day habilitation, supported employment, employment-related training and center-based respite services to NOW recipients (*Louisiana Register*, Volume 33, Number 5). The department amended the February 9, 2007 and May 20, 2007 Emergency Rules to further clarify the provisions governing the wage enhancement payment (*Louisiana Register*, Volume 33, Number 9). This proposed Rule is being promulgated to continue the provisions of the September 20, 2007 Emergency Rule.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability or autonomy as described in R.S. 49:972.

**Title 50  
PUBLIC HEALTH—MEDICAL ASSISTANCE  
Part XXI. Home and Community Based Services  
Waivers**

**Subpart 11. New Opportunities Waiver  
Chapter 143. Reimbursement  
§14301. Reimbursement Methodology**

A. - E. ...

F. Direct Support Professionals Wage Enhancement

1. Effective February 9, 2007, an hourly wage enhancement payment in the amount of \$2 will be

reimbursed to providers for full-time equivalent (FTE) direct support professionals who provide individual and family support services to New Opportunities Waiver recipients.

2. Effective May 20, 2007, an hourly wage enhancement payment in the amount of \$2 will be reimbursed to providers for full-time equivalent (FTE) direct support professionals who provide the following services to New Opportunities Waiver recipients.

- a. day habilitation;
- b. supported employment;
- c. employment-related training; and
- d. center-based respite.

3. At least 75 percent of the wage enhancement shall be paid in the aggregate to direct support workers as wages. If less than 100 percent of the enhancement is paid in wages, the remainder, up to 25 percent, shall be used to pay employer-related taxes, insurance and employee benefits.

4. Effective September 20, 2007, the minimum hourly rate paid to direct support professionals shall be the federal minimum wage in effect on February 20, 2007 plus 75 percent of the wage enhancement or the current federal minimum wage, whichever is higher.

5. Providers shall be required to submit a certified wage register to the department verifying the direct support professionals' gross wages for the quarter ending June 30, 2005. The wage register will be used to establish a payroll baseline for each provider. It shall include the following information:

- a. gross wage paid to the direct support professional(s);
- b. total number of direct support hours worked; and
- c. the amount paid in employee benefits.

6. A separate report shall be submitted for paid overtime.

7. The provider shall submit quarterly wage reports that verify that the 75 percent wage enhancement has been paid to the appropriate staff.

8. The provider shall submit a report, according to the department's specifications, that will be used to measure the effectiveness of the wage enhancement.

9. The wage enhancement payments reimbursed to providers shall be subject to audit by the department.

10. Noncompliance or failure to demonstrate that the wage enhancement was paid directly to direct support professionals may result in:

- a. forfeiture of eligibility for wage enhancement payments;
- b. recoupment of previous wage enhancement payments;
- c. Medicaid fraud charges; and
- d. disenrollment in the Medicaid Program.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:1209 (June 2004), amended by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 34:

Implementation of the provisions of this Rule shall be contingent upon the approval of the U.S. Department of

Health and Human Services, Centers for Medicare and Medicaid Services.

Interested persons may submit written comments to Kathy Kliebert, Office for Citizens with Developmental Disabilities, P.O. Box 3117, Baton Rouge, LA 70821-3117. She is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Thursday, December 27, 2007, at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Roxane A. Townsend, M.D.  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Home and Community-Based Services  
Waivers—New Opportunities Waiver—Direct Support  
Professionals Wage Enhancement**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

It is anticipated that the implementation of this proposed rule will result in an estimated increase in expenses to the state of \$10,266,049 for FY 07-08, \$10,573,820 for FY 08-09, and \$10,891,034 for FY 09-10. It is anticipated that \$408 (\$204 SGF and \$204 FED) will be expended in FY 07-08 for the state's administrative expense for promulgation of this proposed rule and the final rule.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

It is anticipated that the implementation of this proposed rule will increase federal revenue collections by approximately \$26,112,263 FY 07-08, \$26,895,421 for FY 08-09, and \$27,702,284 for FY 09-10. It is anticipated that \$204 will be expended in FY 07-08 for the federal administrative expenses for promulgation of this proposed rule and the final rule.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

This rule, which continues the provisions of the September 20, 2007 Emergency Rule, proposes to amend the provisions governing the reimbursement methodology for the New Opportunities Waiver (NOW) program to implement an hourly wage enhancement payment to providers for direct care staff (approximately 6,062,984 monthly units of service). It is anticipated that implementation of this proposed rule will increase program expenditures in the NOW program by approximately \$36,377,904 for FY 07-08, \$37,469,241 for FY 08-09 and \$38,593,318 for FY 09-10.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

It is anticipated that the implementation of this rule will have a positive effect on competition and employment by assisting providers to recruit and retain sufficient direct care staff.

Jerry Phillips  
Medicaid Director  
0711#069

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Social Services Office of Family Support

TANF—General Educational Development (GED) Testing Program (LAC 67:III.5595)

In accordance with R.S.49:950 et seq., the Administrative Procedure Act, the Department of Social Services, Office of Family Support, proposes to adopt LAC 67:III, Subpart 15, General Educational Development (GED) Testing Program as a new TANF Initiative.

Pursuant to Act 18 of the 2007 Regular Session of the Louisiana Legislature, the agency is adopting the GED Testing Program to support and enhance the educational and job readiness skills of identified students at risk of dropping out or engaging in negative behaviors that can lead to dependency, out-of-wedlock pregnancies, imprisonment, etc. In addition the program encourages building stable families by promoting GED attainment, leading to improved opportunities for employment. The program provides GED adult literacy services to prepare students for passage of the GED Test. Students' increased literacy levels may lead to the attainment of a Louisiana High School Equivalency Diploma upon passage of the GED, and possible entry into postsecondary education or employment opportunities including vocational skill trainings.

This Rule was affected October 17, 2007, by a Declaration of Emergency published in the November 2007 issue of the *Louisiana Register*.

#### Title 67

#### SOCIAL SERVICES

#### Part III. Office of Family Support

#### Subpart 15. Temporary Assistance to Needy Families (TANF) Initiatives

#### Chapter 55. TANF Initiatives

#### §5595. GED Testing Program

A. Effective October 17, 2007, the Office of Family Support shall enter into a Memorandum of Understanding with the Department of Education for the General Educational Development (GED) Testing Program.

B. The services provided consist of GED adult literacy services which prepare students for passage of the GED Test. The GED adult literacy services will address all levels of entering students such as Adult Basic Education (ABE) which will be directed toward students with literacy skills in the range of grades 0-6; Pre-GED directed toward students with literacy skills in the range of grades 7-8; and Adult Secondary Education (ASE) directed toward students with literacy skills in the range of grades 9-12.

C. These services will be provided to 16-21 year olds. These services meet TANF goal 3, to prevent and reduce the incidence of out-of-wedlock pregnancies. TANF goal 3 will be met by supporting and enhancing the educational and job readiness skills of youth at risk of dropping out of school and those who have already dropped out of school and are at risk of engaging in negative behaviors that can lead to out-of-wedlock pregnancies. These services will also be provided to custodial and non-custodial parents who are 22 years old and older with a minor child. These services meet TANF goal 4, to encourage the formation and maintenance of a two parent families. TANF goal 4 will be met by

building stable families by promoting GED attainment which will lead to improved opportunities for employment.

D. Eligibility for services is not limited to needy families.

E. Services are considered non-assistance in that they are not considered to meet an on-going need.

AUTHORITY NOTE: Promulgated in accordance with 42 USC 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 18, 2007 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 34:

#### Family Impact Statement

1. What effect will this Rule have on the stability of the family? The purpose of the program is to support and enhance the educational and job readiness skills of identified students at risk of dropping out or engaging in negative behaviors that can lead to dependency, out-of-wedlock births, imprisonment, etc. In addition the program promotes building stable families by promoting GED attainment leading to improved opportunities for employment. The increased literacy levels may lead to the attainment of a Louisiana High School Equivalency Diploma upon passage of the GED, and possible entry into postsecondary education or employment opportunities including vocational skill trainings.

2. What effect will this have on the authority and rights of persons regarding the education and supervision of their children? An effect on the authority and rights of persons regarding the education and supervision of their children is not foreseen at this time.

3. What effect will this have on the functioning of the family? As a result of participants participating in the GED Testing Program, a positive effect should occur due to the attainment of a Louisiana High School Equivalency Diploma upon passage of the GED, and possible entry into post-secondary education or employment opportunities including vocational skill trainings.

4. What effect will this have on family earnings and family budget? Upon passage of the GED, the effect of obtaining a Louisiana High School Equivalency Diploma could increase the family earnings as well as offer the opportunity to proceed with a post-secondary education or further employment opportunities including vocational skills training.

5. What effect will this have on the behavior and personal responsibility of children? An effect on the behavior and personal responsibility of children is not foreseen at this time.

6. Is the family or local government able to perform the function as contained in this proposed Rule? No, this program is strictly an agency function.

All interested persons may submit written comments through December 27, 2007 to Adren O. Wilson, Assistant Secretary, Office of Family Support, P.O. Box 94065, Baton Rouge, LA 70804-9065.

A public hearing on the proposed Rule will be held on December 27, 2007, at the Department of Social Services, Iberville Building, 627 North Fourth Street, Seminar Room I-129, Baton Rouge, LA, beginning at 9:15 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the Bureau of Appeals at least seven

working days in advance of the hearing. For assistance, call (225) 342-4120 (Voice and TDD).

Ann Silverberg Williamson  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: TANF—General Educational  
Development (GED) Testing Program**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO  
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

This rule will allow the Department of Social Services (DSS) to adopt the General Educational Development (GED) Testing Program as a new Temporary Assistance for Needy Families (TANF) initiative. The GED Program will continue to exist and be administered by the Department of Education (DOE) but will receive TANF funding from DSS to expand services to approximately 300 additional individuals in the Baton Rouge and New Orleans areas. The GED program supports and enhances the educational and job readiness skills of identified students at risk of dropping out or engaging in negative behaviors that can lead to dependency, out-of-wedlock pregnancies, imprisonment, etc. The program serves individuals ages 16–21 years old as well as custodial and non-custodial parents who are 22 years old and older with a minor child.

This TANF initiative will be funded with 100% Louisiana TANF Block Grant funds and will cost approximately \$500,000 for FY 07/08 and \$400,000 for FY 08/09 and FY 09/10. Future expenditures for this program are subject to legislative appropriation.

The cost of publishing the rule is estimated to be \$160. This is a one-time cost that is routinely included in the agency's annual budget. The total estimated implementation cost for FY 07/08 is approximately \$500,160.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE  
OR LOCAL GOVERNMENTAL UNITS (Summary)**

Implementation of this rule will have no effect on state or local revenue collections.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO  
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL  
GROUPS (Summary)**

The GED Testing Program has a long-term goal of improving the economic situations of the targeted families via educational opportunities available through the program which should lead to career advancements.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT  
(Summary)**

The increased literacy levels may lead to the attainment of a Louisiana High School Equivalency Diploma upon passage of the GED and possible entry into postsecondary education or employment opportunities including vocational skill training.

Adren O. Wilson  
Assistant Secretary  
0711#078

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Social Services  
Office of Family Support**

TANF—Nurse Family Partnership (NFP) Program  
(LAC 67:III.5593)

In accordance with R.S.49: 950 et seq., the Administrative Procedure Act, the Department of Social Services, Office of Family Support, proposes to adopt LAC 67:III, Subpart 15, Nurse Family Partnership (NFP) Program as a new TANF Initiative.

Pursuant to Act 18 of the 2007 Regular Session of the Louisiana Legislature, the agency is adopting the Nurse Family Partnership (NFP) Program to serve low-income, first-time mothers by providing nurse home visitation services beginning early in pregnancy and continuing through the first two years of the child's life. First time mothers may enroll as early as possible during their pregnancy, through week 28 of their pregnancy. The goals of the program include but are not limited to improving the child's health and development and increasing the economic self-sufficiency for eligible participants. Examples of the activities used to achieve these goals include, but are not limited to, engaging in activities centered on child development, parenting skills, developing a plan to continue the mother's education, and assisting the mother in finding employment.

This Rule was affected October 1, 2007, by a Declaration of Emergency published in the October 2007 issue of the *Louisiana Register*.

**Title 67**

**SOCIAL SERVICES**

**Part III. Office of Family Support**

**Subpart 15. Temporary Assistance to Needy Families  
(TANF) Initiatives**

**Chapter 55. TANF Initiatives**

**§5593. Nurse Family Partnership (NFP) Program**

A. Effective October 1, 2007, the Office of Family Support shall enter into a Memorandum of Understanding with the Louisiana Office of Public Health, Maternal and Child Health Program to serve low-income, first-time mothers by providing nurse home visitation services beginning early in pregnancy and continuing through the first two years of the child's life. First time mothers may enroll as early as possible during their pregnancy, through week 28 of their pregnancy. The goals of the program include, but are not limited to, improving child health and development and increasing the economic self-sufficiency for eligible participants. Examples of the activities used to achieve these goals include, but are not limited to, engaging in activities centered on child development, parenting skills, developing a plan to continue the mother's education, and assisting the mother in finding employment.

B. These services meet TANF Goals 1 thru 4:

1. Goal 1—to provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;

2. Goal 2—to end dependence of needy parents on government benefits by promoting job preparation, work, and marriage;

3. Goal 3—to prevent and reduce the incidence of out-of-wedlock pregnancies; and

4. Goal 4—to encourage the formation and maintenance of two-parent families.

C. Eligibility for services is limited to needy first time mothers. Eligible participants in the NFP Program shall be first-time mothers who are no more than 28 weeks pregnant at the time of enrollment and who are at or below 200 percent of poverty.

D. Services are considered non-assistance by the agency in that they are not considered to meet an on-going basic need.

AUTHORITY NOTE: Promulgated in accordance with 42 USC 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 18, 2007 Reg. Session

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 34:

#### **Family Impact Statement**

1. What effect will this Rule have on the stability of the family? The purpose of this program is to improve the mother's overall health and well-being, child's overall development, and mother's own personal development.

2. What effect will this have on the authority and rights of persons regarding the education and supervision of their children? An effect on the authority and rights of persons regarding the education and supervision of their children is not foreseen at this time.

3. What effect will this have on the functioning of the family? As a result of mother's participating in the NFP Program, a positive effect should occur on the mother's overall health and well-being, her child's overall development and her own personal development.

4. What effect will this have on family earnings and family budget? The Nurse Family Partnership program provides educational and employment assistance with the goal of improving the economic outlook of participating mothers.

5. What effect will this have on the behavior and personal responsibility of children? A positive effect should occur on the child's overall development.

6. Is the family or local government able to perform the function as contained in this proposed Rule? No, this program is strictly an agency function.

All interested persons may submit written comments through December 27, 2007, to Adren O. Wilson, Assistant Secretary, Office of Family Support, P.O. Box 94065, Baton Rouge, LA 70804-9065.

A public hearing on the proposed rule will be held on December 27, 2007, at the Department of Social Services, Iberville Building, 627 North Fourth Street, Seminar Room

I-129, Baton Rouge, LA beginning at 9 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the Bureau of Appeals at least seven working days in advance of the hearing. For assistance, call (225) 342-4120 (Voice and TDD).

Ann Silverberg Williamson  
Secretary

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: TANF—Nurse Family Partnership (NFP) Program**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

This rule will allow the Department of Social Services (DSS) to adopt the Nurse Family Partnership (NFP) Program as a new Temporary Assistance for Needy Families (TANF) initiative. The NFP program will continue to exist and be administered by the Department of Health and Hospitals/Office of Public Health, Maternal and Child Health Program but will receive TANF funding from DSS to expand services to approximately 1,600 additional mothers at existing sites and 700 additional mothers at new sites. This program provides non-medical services to first-time mothers who are no more than 28 weeks pregnant at the time of enrollment and who are at or below 200% of the poverty level. These services include activities centered on child development, parenting skills, and educational and employment assistance.

This TANF initiative will be funded with 100% Louisiana TANF Block Grant funds and will cost approximately \$3,000,000 for FY 07/08 and \$2,700,000 for FY 08/09 and FY 09/10. Future expenditures for this program are subject to legislative appropriation.

The cost of publishing the rule is estimated to be \$160. This is a one-time cost that is routinely included in the agency's annual budget. The total estimated implementation cost for FY 07/08 is approximately \$3,000,160.

#### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

Implementation of this rule will have no effect on state or local revenue collections.

#### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

The Nurse Family Partnership program provides educational and employment assistance with the goal of improving the economic outlook of participating mothers.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The Nurse Family Partnership program assists mothers in finding employment to help promote self-sufficiency.

Adren O. Wilson  
Assistant Secretary  
0711#079

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

# Potpourri

## POTPOURRI

### Department of Agriculture and Forestry Horticulture Commission

#### Retail Floristry Examination

The next retail floristry examinations will be given January 28-February 1, 2008, at 9:30 a.m. in the Nelson Memorial Building, Louisiana State University Campus, Baton Rouge, LA. The deadline for sending in application and fee is December 14, 2007. No applications will be accepted after December 14, 2007.

Further information pertaining to the examinations may be obtained from Craig Roussel, Director, Horticulture Commission, Box 3596, Baton Rouge, LA 70821-3596, phone (225) 952-8100.

Any individual requesting special accommodations due to a disability should notify the office prior to December 14, 2007. Questions may be directed to (225) 952-8100.

Bob Odom  
Commissioner

0711#033

## POTPOURRI

### Department of Agriculture and Forestry Office of Forestry and Department of Revenue Tax Commission

#### Timber Stumpage Values

The Louisiana Forestry Commission and the Louisiana Tax Commission will meet and jointly adopt current average timber market values for 2008 on December 10, 2007, which is the second Monday in December as required by the provisions of R.S. 47:633. The meeting will begin at 10 a.m. and be held at the headquarters of the Louisiana Department of Agriculture and Forestry, 5825 Florida Blvd., Baton Rouge, LA.

The valuations adopted by these Commissions shall take effect on January 1, 2008 and continue through December 31, 2008.

The Louisiana Department of Agriculture and Forestry, Office of Forestry has compiled the following data and developed the following recommendations for the determination of the current average stumpage market value of trees and timber and of pulpwood for calendar year 2008.

Stumpage Values to be Recommended Based on Quarterly Market Bulletin Data		
Trees and Timber	Price/Scale	Price/Ton
Pine Sawtimber	\$323.06/MBF	\$40.38/Ton
Hardwood & Cypress Sawtimber	\$267.37/MBF	\$28.14/Ton
Pine Chip and Saw	\$56.39/CD	\$20.89/Ton

Stumpage Values to be Recommended Based on Quarterly Market Bulletin Data		
Pulpwood	Price/Scale	Price/Ton
Pine Pulpwood	\$26.23/CD	\$9.71/Ton
Hardwood & Cypress Pulpwood	\$16.53/CD	\$5.80/Ton
Conversion Factors		
MBF Pine Doyle Scale	= 16,000	= 8.00 Tons
MBF Hardwood Doyle Scale	= 19,000	= 9.50 Tons
Cord Pine	= 5,400 lbs	= 2.70 Tons
Cord Hardwood	= 5,700 lbs	= 2.85 Tons
Chip-N-Saw	= 5,400 lbs	= 2.70 Tons

Signed and attested to this 7th day of November, 2008.

Kirk Casanova  
Associate State Forester

0711#039

## POTPOURRI

### Department of Environmental Quality Office of the Secretary

Secondary Containment for UST Systems—Advanced  
Notice of Rulemaking and Solicitation of Comments  
(LAC 33:XI.103, 301, 303, 507, 509, and 701)(UT014)

Under the authority of the Louisiana Environmental Quality Act, R. S. 30:2001 et seq., the secretary gives notice that the Office of Environmental Assessment, Underground Storage Tank Division, is giving advanced notice of proposed rulemaking for rules governing secondary containment requirements for UST systems, LAC 33:XI.103, 301, 303, 507, 509, and 701 (UT014).

On August 8, 2005, the Energy Policy Act of 2005 was signed into law. Among other things, this law makes amendments to Subtitle I of the Solid Waste Disposal Act. The Solid Waste Disposal Act was the federal legislation that originally created the underground storage tank (UST) program in 1986. The amendments to this program are found in the Underground Storage Tank Compliance Act of 2005 of Title XV, Subtitle B, of the Energy Act. The legislation is aimed at reducing the number of underground storage tank releases to the environment by focusing on preventing releases. In order to successfully implement the changes prescribed by the new legislation, EPA and the state will work closely with tank owners and operators, as well as other stakeholders. This draft rule represents the secondary containment phase of the Underground Storage Tank Compliance Act. It will require owners and/or operators of UST systems to install secondary containment on new installations or replacements of tanks and piping. The rule will require secondary containment for repairs to tanks or piping as defined. The difference between "repair" and "replacement" is defined.

The department is soliciting comments for the draft proposed Rule for secondary containment for UST systems. Written comments concerning the draft Rule are due no later

than 4:30 p.m., January 31, 2008, and should be submitted to Sharon Parker, Office of the Secretary, Legal Affairs Division, Box 4302, Baton Rouge, LA 70821-4302 or to FAX (225) 219-3582 or by e-mail to sharon.parker@la.gov. Persons commenting should reference this document as UT014. Copies of the draft rule can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of UT014. This draft Rule is available on the Internet at www.deq.louisiana.gov/portal/tabid/1669/default.aspx.

The draft rule is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 645 N. Lotus Drive, Suite C, Mandeville, LA 70471.

### Title 33

## ENVIRONMENTAL QUALITY

### Part XI. Underground Storage Tanks

#### Chapter 1. Program Applicability and Definitions

##### §103. Definitions

A. For all purposes of these rules and regulations, the terms defined in this Section shall have the following meanings, unless specifically defined otherwise in LAC 33:XI.1105 or 1303.

\*\*\*

*Install*—the process of placing a UST system in the ground and preparing it to be put into service.

\*\*\*

*Pipe or Piping*—a hollow cylinder or tubular conduit that is constructed of non-earthen materials and that routinely contains and conveys regulated substances from a UST to a dispenser or other end-use equipment. Such piping includes any elbows, couplings, unions, valves, or other in-line fixtures that contain and convey regulated substances from the UST to the dispenser. This definition does not include vent, vapor recovery, or fill lines.

\*\*\*

*Replace or Replacement*—to remove an existing UST and install a new UST in substantially the same location as the removed tank, or to remove and replace 25 percent or more of piping associated with a single UST.

\*\*\*

*Secondary Containment*—a containment system that utilizes an outer or secondary container or impervious liner designed to prevent releases of regulated substances from the primary container from reaching the surrounding environment for a time sufficient to allow for detection and control of the released product. Such systems include, but are not limited to, double-wall tanks and piping, jacketed tanks and piping that have an interstitial space that allows for interstitial monitoring, and any other secondarily-contained system approved by the department prior to installation.

\*\*\*

*Under-Dispenser Containment*—a containment system beneath a dispenser designed to prevent releases of regulated substances from the dispenser or contained piping from reaching the surrounding environment for a time sufficient to allow for detection and control of the released product. Such

containment must be liquid-tight on its sides, bottom, and at any penetrations, and must allow for visual inspection and access to the components in the containment system or be regularly monitored.

\*\*\*

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended LR 17:658 (July 1991), LR 18:727 (July 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2558 (November 2000), LR 27:520 (April 2001), amended by the Office of Environmental Assessment, LR 31:1065 (May 2005), LR 31:1577 (July 2005), repromulgated LR 31:2002 (August 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 34:

### Chapter 3. Registration Requirements, Standards, and Fee Schedule

#### §301. Registration Requirements

A. - B.1. ...

a. tank and piping installation in accordance with LAC 33:XI.303.B.6, including secondary containment of new and replacement tanks and/or piping, under-dispenser containment, and submersible pump containment;

b. - d. ...

2. All owners of new UST systems must ensure that the installer certifies on the registration form that the methods used to install the tanks and piping comply with the requirements of LAC 33:XI.303.B.6.a. Beginning January 20, 1992, registration forms shall include the name and department-issued certificate number of the individual exercising supervisory control over *installation-critical junctures* (as defined in LAC 33:XI.1303) of a UST system.

C. - C.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 11:1139 (December 1985), amended LR 16:614 (July 1990), LR 17:658 (July 1991), LR 18:727 (July 1992), LR 20:294 (March 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2558 (November 2000), LR 28:475 (March 2002), amended by the Office of Environmental Assessment, LR 31:1066 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2520 (October 2005), repromulgated LR 32:393 (March 2006), amended LR 32:1852 (October 2006), LR 33:2171 (October 2007), LR 34:

#### §303. Standards for UST Systems

A. ...

B. Standards for New UST Systems. In order to prevent releases due to structural failure, corrosion, or spills and overfills for as long as the UST system is used to store regulated substances, all owners and operators of new UST systems must meet the requirements of this Subsection. No portion of a new UST system installed between December 22, 1988 and December 20, 2008, shall be installed within 50 feet of an active or abandoned water well unless the entire system meets the requirements of LAC 33:XI.703.C.2.

1. - 1.d.ii. ...

e. the tank construction and corrosion protection are determined by the department to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human

health and the environment than the constructions listed in Subparagraphs B.1.a-d and f of this Section; and

f. for any UST that is installed or replaced after December 20, 2008, the tank complies with the following:

i. it is an accepted UST design as described in Subparagraphs B.1.a-e of this Section and is of double-walled or jacketed construction in accordance with Subsection A of this Section and is capable of containing a release from the inner wall of the tank and is designed with release detection in accordance with LAC 33:XI.701.A.6.a; or

ii. it is some other secondarily-contained tank system approved by the department prior to installation.

2. - 2.c.ii. ...

d. the piping construction and corrosion protection are determined by the department to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than the requirements in Subparagraphs B.2.a-c, e, and f of this Section; or

e. the piping is of double-walled non-metallic flexible or semi-rigid construction; and

f. if 25 percent or more of the piping to any one UST is replaced after December 20, 2008, or if all piping connected to a UST is installed or replaced after December 20, 2008, it complies with Clause B.2.f.i or ii of this Section. If a new motor fuel dispenser is installed at an existing UST facility and new piping is added to the UST system to connect the new dispenser to the existing system, then the new piping shall comply with Clause B.2.f.i or ii of this Section. Suction piping that meets the requirements of LAC 33:XI.703.B.2.b.i-v and suction piping that manifolds two or more tanks together are not required to meet the secondary containment requirements outlined in this Paragraph. Piping, other than suction piping that meets the requirements of LAC 33:XI.703.B.2.b.i-v and suction piping that manifolds two or more tanks together, shall comply with the following:

i. any of the accepted piping designs listed in Subparagraphs B.2.a-e of this Section shall be fabricated with double-walled or jacketed construction in accordance with Subsection A of this Section and shall be capable of containing a release from the inner wall of the piping and shall be designed with release detection in accordance with LAC 33:XI.701.B.4; or

ii. the piping system shall have some other form of secondary containment system approved by the department prior to installation.

3. - 3.a. ...

i. spill prevention equipment that will prevent release of product to the environment when the transfer hose is detached from the fill pipe (for example, a spill bucket). Spill buckets shall have liquid-tight sides and bottoms and be maintained free of regulated substances. Regulated substances spilled into any spill bucket shall be immediately removed by the UST owner and/or operator or the bulk fuel distributor. The presence of regulated substances in a spill bucket is a violation this Section and may result in issuance of an enforcement action to the UST owner and/or operator and the bulk fuel distributor; and

a.ii. - b.ii. ...

4. Under-Dispenser Containment. Under-dispenser containment sumps installed after December 20, 2008, shall have liquid-tight sides and bottoms and be maintained free of storm water and debris. Regulated substances spilled into any under-dispenser containment sump shall be immediately removed upon discovery to the maximum extent practicable.

a. After December 20, 2008, under-dispenser containment sumps are required in the following conditions:

i. any installation of a new dispenser at a new facility;

ii. any installation of a new dispenser at an existing facility where new piping is added to the UST system to connect the new dispenser to the existing system;

iii. any installation of a replacement dispenser at an existing facility where the piping that connects the dispenser to the existing piping is replaced. Replacing the metal flexible connector, riser, or other transitional components that are beneath the dispenser and that connect the dispenser to the piping requires addition of a containment sump.

b. Replacing an existing dispenser where no piping and none of the piping that connects the dispenser to the existing piping are replaced does not require the addition of an under-dispenser containment sump.

5. Submersible Turbine Pump (STP) Secondary Containment. STP secondary containment can consist of either a built-in secondary containment system or a STP containment sump. STP containment sumps installed after December 20, 2008, shall have liquid-tight sides and bottoms and be maintained free of storm water and debris. Regulated substances spilled into any STP containment sump shall be immediately removed upon discovery to the maximum extent practicable.

a. After December 20, 2008, secondary containment is required for submersible pumps in the following conditions:

i. any installation of a new STP at a new facility;

ii. any installation of an STP (the entire STP, STP housing, and riser pipe) at an existing facility where new piping is added to the UST system to connect the new STP to the existing system;

iii. any installation of a replacement STP (the entire STP, STP housing, and riser pipe) at an existing facility where the piping that connects the STP to the existing piping is replaced. Replacing the metal flexible connector with a single-walled flexible connector requires the addition of a containment sump. Replacing the metal flexible connector with a double-walled flexible connector does not require the addition of a containment sump as long as the newly-installed STP is secondarily contained.

b. Replacing an existing STP where no piping is replaced does not require the addition of STP secondary containment.

6. Installation Procedures

a. Installation. All tanks and piping must be installed in accordance with Subsection A of this Section and in accordance with the manufacturer's instructions.

b. Certification of Installation and Verification of Installer Certification

i. From the date of promulgation of these regulations until January 20, 1992, owners and operators must certify installations as follows. All owners and operators must ensure that one or more of the following methods of certification, testing, or inspection is used to demonstrate compliance with Subparagraph B.6.a of this Section by providing a certification of compliance on the UST registration form (UST-REG-02) in accordance with LAC 33:XI.301:

(a). the installer has been certified by the tank and piping manufacturers; or

(b). the installation has been inspected and certified by a registered professional engineer with education and experience in UST system installation; or

(c). the installation has been inspected and approved by the department; or

(d). all work listed in the manufacturer's installation checklists has been completed; or

(e). the owner and operator have complied with another method for ensuring compliance with Subparagraph B.6.a of this Section that is determined by the department to be no less protective of human health and the environment.

ii. Beginning January 20, 1992, all owners and operators must ensure that the individual exercising supervisory control over *installation critical-junctures* (as defined in LAC 33:XI.1303) of a UST system is certified in accordance with LAC 33:XI.Chapter 13. To demonstrate compliance with Subparagraph B.6.a of this Section, all owners and operators must provide a certification of compliance on the UST Registration of Technical Requirements Form (UST-REG-02) within 60 days of the introduction of any regulated substance. Forms shall be filed with the Office of Environmental Assessment.

c. Notification of Installation. The owner and operator must notify the Office of Environmental Assessment in writing at least 30 days before beginning installation of a UST system by:

i. completing the Installation, Renovation and Upgrade Notification Form (UST-ENF-04);

ii. notifying the appropriate regional office of the Office of Environmental Assessment by mail or fax seven days prior to commencing the installation and before commencing any *installation-critical juncture* (as defined in LAC 33:XI:1303);

iii. including in the notification a statement of the number of active or abandoned water wells within 50 feet of the UST system and the type of system to be installed; and

iv. including in the notification the methods to be used to comply with LAC 33:XI.Chapter 7.

C. - C.6.b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 11:1139 (December 1985), amended LR 16:614 (July 1990), LR 17:658 (July 1991), LR 18:728 (July 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2558 (November 2000), LR 28:475 (March 2002), amended by the Office of Environmental Assessment, LR 31:1066 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2520 (October 2005), LR 33:2171 (October 2007), LR 34:

## Chapter 5. General Operating Requirements

### §507. Repairs Allowed

A. - A.6. ...

7. After December 20, 2008, if any piping repair or replacement impacts 25 percent or more of the UST piping in the repaired piping run, that entire piping run shall be upgraded with secondary containment and meet the requirements of LAC 33:XI.303.B.2 and 701.B.4.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended LR 17:658 (July 1991), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2558 (November 2000), amended by the Office of Environmental Assessment, LR 31:1070 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2172 (October 2007), LR 34:

### §509. Reporting and Recordkeeping

A. ...

1. registration forms (UST-REG-01 and 02) for all UST systems (LAC 33:XI.301), including certification of installation and verification of installer certification for new UST systems, in accordance with LAC 33:XI.303.B.6.b;

A.2. - B.5. ...

6. documentation of the type and construction of the tank, piping, leak detection equipment, corrosion protection equipment, and spill and overflow protection equipment currently in use at the site; and

B.7. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended LR 18:728 (July 1992), amended by the Office of Environmental Assessment, LR 31:1070 (May 2005), repromulgated by the Office of the Secretary, Legal Affairs Division, LR 32:393 (March 2006), amended LR 34:

## Chapter 7. Methods of Release Detection and Release Reporting, Investigation, Confirmation, and Response

### §701. Methods of Release Detection

A. - A.6. ...

a. For double-walled UST systems, the sampling or testing method used must be capable of detecting a release through the inner wall in any portion of the tank that routinely contains product. Interstitial monitoring of double-walled or jacketed tanks shall either be conducted continuously by means of an automatic leak sensing device that signals to the operator the presence of any regulated substance in the interstitial space, or conducted manually every 30 days by means of a procedure capable of detecting the presence of any regulated substance in the interstitial space.

A.6.b. - B.2. ...

3. Applicable Tank Methods. Any of the methods in Paragraphs A.4-8 of this Section may be used if they are designed to detect a release from any portion of the underground piping that routinely contains regulated substances.

4. Interstitial Monitoring. Interstitial monitoring of double-walled or jacketed piping shall either be conducted continuously by means of an automatic leak sensing device that signals to the operator the presence of any regulated substance in the interstitial space or sump, or conducted manually every 30 days by means of a procedure capable of detecting the presence of any regulated substance in the interstitial space or sump.

a. The interstitial space or sump shall be maintained free of water, debris, or anything that could interfere with leak detection capabilities.

b. Subparagraph B.4.a of this Section does not apply to containment sumps that were installed prior to December 20, 2008, that do not utilize interstitial monitoring as a piping release detection method.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended by the Office of Environmental Assessment, LR 31:1072 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 33: 2172 (October 2007), LR 34:

Herman Robinson, CPM  
Executive Counsel

0711#028

## POTPOURRI

### Department of Environmental Quality Office of the Secretary

#### State Implementation Plan for Regional Haze Program

Under the authority of the Louisiana Environmental Quality Act, R. S. 30:2001 et seq., the secretary gives notice that the Office of Environmental Assessment, Plan Development Section, will submit a proposed revision to the State Implementation Plan (SIP) for the Regional Haze Program as required under the Clean Air Act, Part C, Section 169, and 40 CFR Part 51.308. Regional haze is visibility impairment caused by the cumulative air pollutant emissions from numerous sources over a wide geographic area.

Section 169A of the Clean Air Act sets forth a national goal for visibility, which is the "prevention of any future, and the remedying of any existing, impairment of visibility in Class I areas which impairment results from manmade air pollution." Breton Wilderness Area, a chain of barrier islands approximately 30 miles off the southeast coast of Louisiana, is classified as a Class I Federal Area, and is afforded visibility protection under the Clean Air Act, Part C, Section 169, and 40 CFR Part 51.308.

A public hearing will be held at 1:30 p.m. on January 24, 2008, in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA. Should individuals with a disability need an accommodation in order to participate, please contact Vivian H. Aucoin at (225) 219-3575 or at the address listed below. Interested persons are invited to attend and submit oral comments on the proposal.

All interested persons are invited to submit written comments concerning the SIP revision no later than 4:30 p.m., January 31, 2008, to Vivian H. Aucoin, Office of

Environmental Assessment, Box 4314, Baton Rouge, LA 70821-4314 or to FAX (225) 219-3582 or by e-mail to vivian.aucoin@la.gov.

A copy of the SIP revision for the Regional Haze Program may be viewed from 8 a.m. to 4:30 p.m. in the DEQ Public Records Center, Room 127, 602 N. Fifth Street, Baton Rouge, LA. The document is available on the Internet at www.deq.louisiana.gov/portal/Default.aspx?tabid=2381.

Herman Robinson  
CPM Executive Counsel

0711#029

## POTPOURRI

### Office of the Governor Division of Administration Office of Facility Planning And Control

Public Hearing—Substantive Change—  
Louisiana Building Code (LAC 34:III.131)

A Notice of Intent was published in the August 20, 2007, edition of the *Louisiana Register* (See LR Vol. 33, No. 08, pages 1725-1726), to establish the current editions of the Louisiana Building Code. That Notice of Intent established the 2003 Edition of the Life Safety Code, Standard 101 as the current edition. Since it was published the Louisiana Office of State Fire Marshal has adopted the 2006 Edition of the Life Safety Code, Standard 101 as the edition that it will enforce. In order to coordinate the Louisiana Building Code with the Louisiana Office of State Fire Marshal, Facility Planning and Control has determined that the 2006 Edition of the Life Safety Code, Standard 101 should be established as the current edition for the Louisiana Building Code. In addition, the statutory reference for the Louisiana Building Code in the Notice of Intent was incorrect. Therefore, the following amendment is hereby made to the proposed Rule.

#### Title 34

### GOVERNMENT CONTRACTS, PROCUREMENT AND PROPERTY CONTROL

#### Part III. Facility Planning and Control

##### Chapter 1. Capital Improvement Projects

##### Subchapter A. Procedure Manual

##### §131. Louisiana Building Code

A. R.S. 40:1722 establishes the Louisiana Building Code and directs that the following codes be established as the standards as minimum standards for this code. These codes shall be established as constituting the code in the editions indicated:

1. the Life Safety Code, Standard 101, 2006 Edition as published by the National Fire Protection Association;
2. Part XIV (Plumbing) of the State Sanitary Code as promulgated by the secretary of the Department of Health and Hospitals;
3. the International Building Code, 2006 Edition as published by the International Code Council;
4. the International Mechanical Code, 2006 Edition as published by the International Code Council;
5. the National Electric Code (NFPA No. 70) 2005 Edition as published by the National Fire Protection Association.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:1410.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:473 (September 1982), amended LR 11:849 (September 1985), LR 33:

In accordance with R.S. 49:968(H)(2), a meeting for the purpose of receiving the presentation of oral comments will be held on November 27, 2007, at 2 p.m. at Office of Facility Planning and Control, Room 7-152, Claiborne Building, 1201 North Third Street, Baton Rouge, LA.

Interested persons should submit written comments on the proposed changes to William Morrison through the close of business on November 21, 2007, at P.O. Box 94095, Baton Rouge, LA 70804-9095 or 1201 North Third Street, Baton Rouge, LA 70802. Comments may also be submitted by e-mail to bill.morrison@la.gov or by fax to (225) 342-7624.

Jerry Jones  
Director

0711#044

### POTPOURRI

#### Office of the Governor Oil Spill Coordinator's Office

##### Duck Lake Oil and Gas Field Crude Oil Discharge

**Action:** Notice of Availability of a Final Damage Assessment and Restoration Plan (Final DARP).

**Agencies:** Louisiana Oil Spill Coordinator's Office, Office of the Governor (LOSCO); Louisiana Department of Environmental Quality (LDEQ); and the Louisiana Department of Wildlife and Fisheries (LDWF).

**Summary:** Notice is hereby given that a document entitled "Final Damage Assessment and Restoration Plan for the St. Martin Parish Duck Lake Oil and Gas Field Oil Spill" is final and available to the public as of November 20, 2007. This document has been prepared by the agencies listed above (referred to herein as the "Trustees") to address injuries to natural resources and services for the unauthorized discharge of crude oil into the Duck Lake Oil and Gas Field, located in St. Martin Parish, Louisiana, on or about December 4, 2002 (referred to herein as the "incident"). The Final DARP presents the trustees' assessment of injuries to natural resources and services attributable to the incident and their plan to restore, replace, or acquire natural resources or services equivalent to those lost, as a basis for compensating the public for injuries resulting from the incident.

Interested members of the public are invited to request a copy of the Final DARP from Gina Muhs Saizan at the address given below.

**For Further Information:** Contact Gina Muhs Saizan at 225-219-5800, or by email at gina.saizan@la.gov. To view the Final DARP via the internet, please visit [www.losco.state.la.us](http://www.losco.state.la.us) and look under News Flash for Duck Lake Oil Spill.

**Address:** Requests for copies of the Final DARP should be sent to:

Gina Muhs Saizan  
Louisiana Oil Spill Coordinator's Office  
150 Third Street, Suite 405  
Baton Rouge, LA 70801

**Supplementary Information:** The public was given an opportunity to review and comment on the Draft DARP during the public comment period, which extended from September 20, 2007 through October 20, 2007. Public review of the Draft DARP is consistent with all state and federal laws and regulations that apply to the Natural Resource Damage Assessment (NRDA) process, including Section 1006 of the Oil Pollution Act (OPA), 33 U.S.C. §2706; the regulations for NRDA under OPA, 15 C.F.R. Part 990; Section 2480 of the Louisiana Oil Spill Prevention and Response Act (OSPRA), R.S. 30:2480 et seq.; and the regulations for NRDA under OSPRA, LAC 43:XXIX, Chapter 1. The Trustees did not receive comments during the public comment period and have prepared the Final DARP for implementation.

Roland Guidry  
Oil Spill Coordinator

0711#043

### POTPOURRI

#### Department of Health and Hospitals Board of Medical Examiners

Midwives—Licensure and Practice—Notice of Hearing  
(LAC 46:XLV.Chapters 23 and 53)

Notice is hereby given, in accordance with R.S. 49:953(A)(2), that the Louisiana State Board of Medical Examiners will convene and hold a public hearing at 4 p.m., Thursday, November 29, 2007, at the offices of the board, 630 Camp Street, New Orleans, LA, for the purpose of receiving public comment on the substantive amendments which the board proposes to make to its existing Rules governing the licensure and practice of licensed midwives. At such hearing all interested persons may appear and present data, views, arguments, information or comments on the proposed rule amendments, which were previously noticed for adoption by Notice of Intent published in the October 20, 2007 edition of the *Louisiana Register*, LR 33, Vol. 10, pp. 2224-2232. Interested persons may obtain a copy of the proposed rule amendments from Rita Arceneaux, Confidential Executive Assistant, Louisiana State Board of Medical Examiners, at P.O. Box 30250, New Orleans, LA, 70190-0250 (630 Camp Street, New Orleans, LA, 70130), (504) 568-6820, Ex. 242. She is responsible for responding to inquiries on the proposed rule amendments.

Robert L. Marier, M.D.  
Executive Director

0711#049

**POTPOURRI**  
**Department of Health and Hospitals**  
**Board of Veterinary Medicine**

Board Meeting Dates

The members of the Louisiana Board of Veterinary Medicine will meet at 8:30 a.m. on the following dates in 2008:

- Thursday, February 7, 2008
- Thursday, April 3, 2008
- Thursday, June 5, 2008 (Annual Meeting)
- Thursday, August 7, 2008
- Thursday, October 2, 2008
- Thursday, December 4, 2008

These dates are subject to change, so please contact the board office via telephone at (225) 342-2176 or email at lbvm@eatel.net to verify actual meeting dates.

Wendy D. Parrish  
 Administrative Director

0711#041

**POTPOURRI**  
**Department of Natural Resources**  
**Office of Conservation**

Orphaned Oilfield Sites

Office of Conservation records indicate that the Oilfield Sites listed in the table below have met the requirements as set forth by Section 91 of Act 404, R.S. 30:80 et seq., and as such are being declared Orphaned Oilfield Sites.

Operator	Field	District	Well Name	Well Number	Serial Number
TPR, Inc..	Bayou Cholpe	L	WX RA SUB:ILC	2	195533

James H. Welsh  
 Conservation

0711#059

**POTPOURRI**  
**Department of Natural Resources**  
**Office of the Secretary**

Loran Coordinates

In accordance with the provisions of R.S. 56:700.1 et seq., notice is given that 21 claims in the amount of \$93,050.81 were received for payment during the period October 1, 2007-October 31, 2007.

There were 19 claims paid and 2 claims denied.

Latitude/Longitude Coordinates of reported underwater obstructions are:

2719.726	8952.101	Jefferson
2904.883	9027.215	Terrebonne
2904.994	9020.714	Terrebonne
2906.823	9017.925	Lafourche
2907.134	9008.634	Jefferson
2907.151	9017.143	Lafourche
2907.238	8924.642	Plaquemines
2913.890	8954.440	Jefferson
2914.204	8954.282	Jefferson
2914.880	8954.190	Jefferson
2915.507	8955.163	Jefferson
2915.655	8955.765	Jefferson
2916.366	8957.111	Jefferson
2917.465	8948.140	Plaquemines
2917.611	8950.186	Jefferson
2923.229	9026.471	Terrebonne
2945.853	8949.108	Plaquemines
2951.306	9325.663	Cameron
2951.531	9320.899	Cameron
2954.529	8947.415	St. Bernard
3010.534	8948.176	St. Tammany

A list of claimants and amounts paid can be obtained from Gwendolyn Thomas, Administrator, Fishermen's Gear Compensation Fund, P.O. Box 44277, Baton Rouge, LA 70804 or you can call (225)342-0122.

Scott A. Angelle  
 Secretary

0711#050

**POTPOURRI**  
**Department of State**  
**Elections Division**

Procurement of Voting System Drayage and Storage  
 (LAC 31:III.Chapter 1)

Under the authority of R.S. 18:19, R.S. 18:1371, R.S. 36:742, and in accordance with the provisions of the Administrative Procedures Act, R.S. 49:950 et seq., and the Louisiana Procurement Code, R.S. 39:1551 et seq., the Secretary of State published a Notice of Intent on June 20, 2007 in the *Louisiana Register* to adopt uniform rules, regulations, forms, and instructions as to the procurement of voting system drayage and warehouse storage. After considering all comments and requests, the Secretary of State has revised the original proposed Rule.

In accordance with R.S. 49:968(H)(2), a meeting for the purpose of receiving the presentation of oral comments will be held on Monday, January 7, 2008 at 10 a.m., at the XII United Plaza Building (formerly the Broadwing Building) Auditorium (in back of building), 8549 United Plaza Blvd., Baton Rouge, LA.

Interested persons should submit written comments on the proposed changes to Angie Rogers LaPlace, Commissioner of Elections, through until 4:30 p.m. on Tuesday, January 8, 2008, at P.O. Box 94125, Baton Rouge, LA 70804-9125. Comments may also be submitted by email to [angie.laplace@sos.louisiana.gov](mailto:angie.laplace@sos.louisiana.gov) or by fax to (225) 922-1167.

**Title 31  
ELECTIONS**

**Part III. Procurement**

**Chapter 1. Procurement of Voting System Drayage and Storage**

**§101. Definition**

*Drayage*—the transporting or cartage of voting equipment and supplies as directed by the Secretary of State.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:1371 and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 34:

**§103. Revised Statutes**

A. These regulations shall be read and interpreted jointly with R.S. 39:1551 et seq.

B. A rule or regulation shall not change any explicit contract provision, commitment, right or obligation of the state, or of a contractor under a state contract in existence on the effective date of that rule or regulation. However, to the extent possible, existing contracts shall be constructed in conformity with these rules and regulations.

C. The bid process for the storage of voting systems shall be performed by the Division of Administration, Office of Facility Planning and Control, except that the Department of State may negotiate for storage space of less than 5,000 square feet in accordance with the provisions of R.S. 18:19.

D. The Office of Facility Planning and Control shall prepare the lease between the department and lessor, and the purchase order shall be prepared by the department for the lease of warehouse storage facilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:19, 1353, 1382, R.S. 39:1643, and R.S. 39:1551 et seq.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 34:

**§105. Invitation for Drayage and Storage Bids, Public Notice, and Bid Opening**

A. All contracts for the drayage and storage of voting systems shall be awarded by competitive sealed bidding on a parish or regional basis.

B. If the Secretary of State determines a bid will be awarded on a regional basis for drayage and storage, the criteria shall include but not necessarily be limited to:

1. not more than four parishes in a region;
2. not more than 1,000 voting systems in a region;
3. uniform beginning delivery time with continuous drayage for each parish in a region;
4. uniform beginning return time with continuous drayage for each parish in a region;
5. agreement will first be obtained from each clerk of court for each parish to be included in a regional bid; and
6. a cost savings when bid on a regional basis.

C. Competitive sealed bidding shall be accomplished by sending out written notices to persons known to be able to provide the department's requirements, and by advertising in accordance with R.S. 18:19 and 1371 at least 30 days prior to bid opening.

1. Written notices shall be mailed to those persons who have previously requested an invitation for bids for said parish or parishes, if regional, within the previous four years. The written notices shall be mailed to any parish governing authority included in the bid to be let.

2. The written notices and advertisements shall announce:

- a. the type of contract;
- b. the parish or region for which the contract is required;
- c. the method of acquiring an invitation for bids; and
- d. the date, time, and place of bid opening.

3. Advertisements shall be published in the official journal of the state and in the official journal of the parish or parishes, if regional, for which the contract is required. Advertisements shall be published in a newspaper of general circulation printed in such parish or parishes, if regional, or, if there is no newspaper printed in such parish or parishes, if regional, in a newspaper printed in the nearest parish that has a general circulation in the parish or parishes, if regional, covered by the contract. The department may publish notices in additional journals for maximum coverage.

4. A notice shall be sent to the parish governing authority and the clerk of court of the parish or parishes, if regional, for which the contract is required. The clerk of court shall prominently post such notice in his office.

5. Notification shall also be made available on the department's election webpage at [www.GeauxVote.com](http://www.GeauxVote.com).

D. The invitation for bids shall contain:

1. complete description of the transportation required;
2. all applicable terms, conditions, and other requirements;
3. types and limits of insurance required;
4. bid and performance bonding requirements; and
5. factors which will be used to determine responsibility and suitability of bidders.

E. Bids shall be publicly opened and read as specified in the invitation for bids in the presence of one or more witnesses. Bidders and the public may be present at any bid opening.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:19 and 1371, R.S. 36:742, and R.S. 39:1594.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 34:

**§113. Evaluation of Drayage and Storage Bids**

A. Drayage bids shall be evaluated based on adherence to the specifications, terms, conditions, and suitability requirements listed in the invitation for bids. The bidder must list any deviations from these specifications, terms, or conditions.

B. Storage bids shall be evaluated based on adherence to the detailed written response to all specifications, any submitted plans, inspection of the proposed site by the department, or an authorized representative, quality, workmanship and suitability of the proposed site for the purposes set forth in the solicitation, including but not limited to the following:

1. location of the proposed space;
2. condition of the proposed site;
3. safety of the proposed site; and
4. timeliness of the availability.

C. The bidder must list any deviations from these specifications, terms or conditions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:742 and 1594.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 34:

**§115. Responsibility of Drayage and Storage Bidders**

A. The Secretary of State or his designee may make reasonable inquiries to determine the responsibility of prospective contractors. In making his determination, the following factors will be considered:

1. has available the appropriate financial, material, equipment, and personnel resources and expertise, or the ability to obtain them, necessary to indicate the capability to meet all contractual requirements;
2. has a satisfactory record of performance on previous state contracts and with other persons;
3. is qualified legally to contract with the state of Louisiana;
4. has supplied an affidavit of No Felony Conviction attesting to the fact that the proposed contractor and/or the principal officers of a corporation are not currently under an order of imprisonment for any felony conviction or have not been convicted of a lesser election offense under Title 18 or an offense involving an election, voting equipment or an election official; and
5. has reasonably supplied any information requested by the Secretary of State in establishing responsibility.

B. Each bidder who is determined to be non-responsible shall be notified in writing. Such notification shall state all reasons for disqualification, and give each bidder who is proposed to be disqualified, a reasonable opportunity to refute the reasons for disqualification at an informal hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:742 and R.S. 39:1601.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 34:

**§117. Correction of Withdrawal of Drayage and Storage Bids**

A. Obvious errors or errors supported by clear and convincing evidence may be corrected, or bids may be withdrawn, if such correction or withdrawal does not prejudice other bidders and such actions may be taken only to the extent permitted under regulations.

1. Any bid may be withdrawn prior to bid opening.
2. Minor informalities or insignificant mistakes may be waived or corrected if such will not prejudice other bidders (i.e., if the effect on price, quantity, quality, delivery, or contractual conditions is not significant). The Secretary of State may waive any informalities or allow corrections by bidders if it is in the best interest of the state of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:742 and R.S. 39:1594(F).

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 34:

**§119. Drayage Bid Guaranty and Bond**

A. If specified in the invitation for bids, a bond, certified check, or money order payable to the Department of State in the amount of 5 percent of the bid must accompany each bid submitted.

B. If a bidder withdraws his bid after bid opening, without complying with LAC 31:III.117, or fails to execute a contract within 20 days of request, the bid bond or other security shall be forfeited and deposited into the Department of the Treasury as income not available.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:1371, R.S. 36:742, and LAC 34:I.523.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 34:

**§121. Drayage Performance Bond**

A. If specified in the invitation for bids, the bidder awarded the contract must submit a performance bond or letter of credit in the penal sum of one and one-half times the contract price made payable to the Department of State.

B. The performance bond shall be written by a surety or insurance company currently on the U.S. Department of the Treasury Financial Management Service list of approved bonding companies which is published annually in the *Federal Register* or by a Louisiana domiciled insurance company with at least an A-rating in the latest printing of the A.M. Best's Key Rating Guide.

C. If a contractor fails to perform in accordance with contractual obligations, the contractor forfeits the performance bond.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:742, R.S. 38:2219, and R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 34:

**§123. Forfeiture of Bonds for Drayage**

A. Actions by bidders causing forfeiture of bonds as stated in §119 and §121 herein shall be cause for removal of said bidders from the department's bid list and will support a determination of non-responsibility for the bidder(s) and its principals for a period of three years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:742 and R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 34:

**§125. General Guaranty for Drayage**

- A. Contractor agrees:
1. to maintain all insurance required in the invitation for bids during the term of the contract;
  2. to pay all taxes, permits, licenses and fees;
  3. to give all notices and comply with all laws, ordinances, rules and regulations of each city and/or town in the parish in which the contractor is performing his duties, and of the state of Louisiana;
  4. to protect the state from loss in case of an accident or mishandling by contractor's employees; and
  5. to make available the equipment, labor, insurance, etc., for drayage of voting machines at times other than for elections. Prices of the above mentioned to be negotiated between the contractor and department or to be determined by competitive bidding in accordance with small purchase provisions of the procurement code and subsequent applicable executive orders.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:742 and R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 34:

**§127. Award of Drayage and Storage Contracts**

A. All contracts shall be awarded to the lowest responsive and responsible bidder within 30 days of bid opening, unless more time is needed by the department to investigate suitability and the bidder is notified accordingly.

1. A responsive bidder means a person who has submitted a bid which conforms in all substantive respects to the invitation for bids, including the specifications set forth in the invitation.

2. The award shall be made by unconditional acceptance of a bid without alteration or correction, except as authorized in §117.

B. If a bidder who is the lowest responsive and responsible bidder declines to accept the contract, the award may be made to the next lowest bidder or the solicitation may be canceled and re-advertised if it is determined to be in the best interest of the state. Any bidder who has declined to accept the contract previously offered shall be ineligible to bid on the subsequent solicitation. A bidder who declines a contract or fails to produce an acceptable performance bond may also be debarred from future bidding.

C. If a bidder who is the lowest bidder fails to meet all criteria as a responsive and/or responsible bidder, the award may be made to the next lowest bidder who meets all criteria as a responsive and responsible bidder or the solicitation may be canceled and re-advertised if it is determined to be in the best interest of the state.

D. In the case of "tie bids," award shall be made in a manner that will discourage future "tie bids." A written justification for the determination of award must be made by the Secretary of State.

E. In-state bidders shall be preferred to out-of-state bidders on a reciprocal basis when there is a tie bid.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:742, R.S. 39:1594 and 1595.1.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 34:

#### **§129. Rejection of Drayage or Storage Bids;**

##### **Cancellation of Drayage or Storage Solicitations**

A. The Secretary of State reserves the right to reject any and all bids when it is in the best interest of the state of Louisiana.

1. Reasons for rejecting a bid include, but are not limited to:

a. a determination of none responsibility of a bidder(s); or

b. the bid is not responsive (i.e., it did not meet specifications or comply with terms and conditions).

2. Reasons for canceling a solicitation include, but are not limited to:

a. the department no longer requires the service;

b. bids received exceeded budgeted funds or were determined by the department to be unreasonable;

c. the solicitation was flawed (i.e., specifications were not complete or were ambiguous);

d. there is reason to believe that the bids received may have been collusive; or

e. there is inadequate competition indicated by low response to the solicitation.

B. When bids are rejected or a solicitation is canceled, written notices shall be given to the bidders, giving the reasons for the rejection or cancellation.

C. When a solicitation is canceled, where appropriate, bidders will be given the opportunity to bid on the new solicitation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:742, R.S. 39:1581 and 1599.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 34:

#### **§131. Emergency Drayage Procurements**

A. The Secretary of State or his designee may declare that an emergency situation exists when:

1. property is subject to loss or destruction as a result of an accident or natural disaster within 30 days of an election;

2. the functioning of the department will be threatened; or

3. the health and safety of any person is threatened.

B. Every effort shall be made to obtain bids from three or more bidders. Bids shall be solicited from bonded, insured draymen or lessors currently under contract with the department.

1. If time permits, written quotations shall be solicited.

2. If time does not permit, telephone quotations shall be solicited.

C. The Secretary of State shall make a written determination stating the basis for the declaration of an emergency, the procedure used prior to selecting a contractor, and the basis for awarding to a particular contractor.

D. The Secretary of State shall keep all records relating to emergency procurements at least three years after the Legislative Auditor's Office have completed their audit of the department for the fiscal year in question.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:742 and R.S. 39:1598.

HISTORICAL NOTE: Promulgated by the Department of State, Elections, LR 34:

#### **§133. Collusive Bidding or Negotiations of Drayage or Storage Contracts**

A. The attorney general shall be notified in writing whenever collusion is suspected among bidders. Such notice shall contain all known facts.

B. All documents involved in a procurement in which collusion is suspected shall be retained for three years after the Legislative Auditor's Office have completed their audit of the department for the fiscal year in questions or until the attorney general notifies the department that they may be destroyed, whichever is longer. These documents shall be made available to the attorney general or his designee upon request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:742 and R.S. 39:1626.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 34:

#### **§135. Drayage and Storage Specifications**

A. All specifications shall be written so as to promote as much competition as possible.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:742 and R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 34:

#### **§137. Drayage Contract Requirements**

A. A contract cannot be transferred, subcontracted, or assigned prior to execution of said contract. After execution of the contract, a contractor may assign or subcontract his obligations under the contract only with the written consent of the Secretary of State, which consent shall not be unreasonably withheld.

B. To the extent that a prospective contractor proposes to utilize subcontractors in performing the contract, the prospective prime contractor shall not be considered to be responsible unless recent performance history indicates an acceptable subcontracting system determined by the Secretary of State. All subcontractors must meet the same standards for responsibility, bonds, and insurance as the prime contractor.

C. If a bidder is the lowest responsible and responsive bidder in more than one parish, bidders will be limited to contracting for parishes with an aggregate total of not more than 1,000 voting systems or four parishes. In the event that those numbers are exceeded, the contracts will be awarded in the order in which bids were taken.

D. The term of the contract shall be one year or less with an option to renew for two additional one-year terms. All contracts shall end on December 31.

E. If the holder of multiple drayage contracts fails to perform in accordance with the provisions of any of his contracts, the Secretary of State may cancel any and all contracts with that contractor. In addition, the contractor may be suspended from future bidding.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:1371, R.S. 36:742 and R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 34:

### **§139. Right to Protest Drayage or Storage Contract Award**

A. All proceedings herewith shall be carried out in accordance with the Conduct of Hearing Rules set forth in LAC 34:I.Chapter 31.

B. Any bidder may protest a solicitation or an award of a contract to the Secretary of State.

C. In regard to the solicitation of a drayage or storage contract, the protest must be made in writing at least two days prior to the opening of bids.

D. In regard to the award of any contract, a written protest must be made within 14 days after the contract is awarded.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:742 and R.S. 39:1671.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 34:

### **§141. Legal and Contractual Remedies for Drayage and Storage of Voting Systems**

A. The Secretary of State or his designee is authorized to settle and resolve any protest prior to court action. If a protest is not resolved by mutual agreement, the Secretary of State or his designee shall, within 14 days, issue a decision in writing. The decision shall:

1. state the reasons for the action taken; and
2. inform the protestant of its right to administrative and judicial review as provided in Part VI of the Procurement Code.

B. Notice of decision shall be furnished immediately to the protestant and any other party intervening.

C. The decision of the Secretary of State or his designee shall be final unless:

1. the decision is fraudulent; or
2. the person has appealed to the Commissioner of Administration in accordance with R.S. 39:1683 and R.S. 39:1685.

D. If a protest is lodged as provided for in these regulations, the department shall not proceed with the solicitation or award, unless the Secretary of State declares in writing that proceeding is necessary to protect the substantial interest of the state. Upon such determination, no court shall enjoin progress under award except after notice and hearing.

E. When a protest is sustained and the protesting bidder should have been awarded the contract but is not, the bidder

shall be reimbursed for reasonable costs associated with the solicitation, including bid preparation costs other than attorney's fees. Any administrative determination of such costs shall require approval of the attorney general.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:742, R.S. 39:1671, R.S. 18:1673 and R.S. 18:1685.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 34:

### **§143. Suspension and Debarment of Drayage or Storage Contractor**

A. A bidder and its principal officers and agents may be debarred or suspended from consideration for award of contracts during an investigation for probable cause if it is in the best interests of the state.

B. The Secretary of State may suspend or debar a person for cause after notice to the bidder has been given and the bidder has had a reasonable opportunity to respond. A bidder may be suspended if the Secretary of State determines that there is probable cause to believe that the bidder has engaged in any activity to lead to debarment.

1. The period of time for the suspension of a drayage or storage contract shall be a minimum of one complete cycle of bidding in all parishes.

2. The period of time for debarment of a drayage or storage contract shall be a minimum of two complete cycles of bidding in all parishes.

C. Causes for debarment shall be determined in accordance with R.S. 39:1672(C).

D. In addition to the provisions of R.S. 39:1672(C), the Secretary of State may debar a bidder for the following reasons:

1. the bidder has withdrawn a bid after an award, for whatever reason, more than once; or

2. the Secretary of State may declare other specific reasons for suspension or debarment which is in the best interests of the state.

D. The Secretary of State shall notify the debarred or suspended bidder in writing of the decision stating the reasons for the action taken and the amount of time of suspension or debarment. Such notification shall also inform the debarred or suspended bidder's rights to administrative and judicial review.

E. The decision of the Secretary of State or his designee shall be final unless:

1. the decision is fraudulent; or
2. the person has appealed to the commissioner of administration in accordance with R.S. 39:1684.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:742 and R.S. 39:1672.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 34:

### **§145. Repeal Prior Rules and Regulations**

A. LAC 34:III.101, 103, 105, 107, 109, 111, 113, 115, 117, 119, 121, 123, 125, 127, 129, 131, 133, 135, 141, 143, 145 and 147 previously adopted by the Department of Elections and Registration are hereby repealed in their entirety.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 34:

Jay Dardenne  
Secretary of State

## POTPOURRI

### Department of State Elections Division

#### Recognition of Political Parties (LAC 31:I.Chapter 9)

Under the authority of R.S. 18:441, R.S. 36:742, and in accordance with the provisions of the Administrative Procedures Act, R.S. 49:950 et seq., the Secretary of State published a notice of intent on June 20, 2007 in the *Louisiana Register* to adopt uniform rules and regulations specifying the minimum guidelines to be used in recognizing political parties in Louisiana. After considering all comments and requests, the Secretary of State has revised the original proposed Rule.

In accordance with R.S. 49:968(H)(2), a meeting for the purpose of receiving the presentation of oral comments will be held on Monday, January 7, 2008 at 10 a.m. at the XII United Plaza Building (formerly the Broadwing Building) Auditorium (in back of building), 8549 United Plaza Blvd., Baton Rouge, LA.

Interested persons should submit written comments on the proposed changes to Angie Rogers LaPlace, Commissioner of Elections, through 4:30 p.m. on Tuesday, January 8, 2008, at P.O. Box 94125, Baton Rouge, LA 70804-9125. Comments may also be submitted by email to [angie.laplace@sos.louisiana.gov](mailto:angie.laplace@sos.louisiana.gov) or by fax to (225) 922-1167.

#### Title 31

#### ELECTIONS

#### Part I. Election Process

#### Chapter 9. Recognition of Political Parties

##### §901. Purpose

A. The purpose of this chapter is to establish minimum guidelines to be used by the Secretary of State in recognizing political parties pursuant to R.S. 18:441B.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:441 and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 34:

##### §903. Definitions

A. For the purposes of this rule, the following definitions shall apply.

*Deceptively Similar*—a political party name which deceives the general public into believing that said political party is that of another party, when in fact, the two parties are not affiliated with each other.

*Identical*—the same exact political party name, even though the two parties are not affiliated with each other.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:441 and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 34:

##### §905. Political Party Recognition Based on Registered Voters

A. A political party which seeks recognition must have at least 1,000 registered voters in the state of Louisiana who are registered as being affiliated with such political party.

B. A political party shall request a list of registered voters from the Secretary of State who are registered as being affiliated with the political party who is seeking

recognition in order to verify that the political party has at least 1,000 registered voters. The Secretary of State shall date this list of registered voters.

C. This list of registered voters shall be provided by the Secretary of State's office, using the political party name given by the requestor, and shall be limited to the exact name provided. For example, a request for a list of registered voters with the "Green Party" would not include "Green," "Green Grass," "Green Labor," "Green Peace," "Greenpeace" or "Greens."

D. All of the following requirements shall be met by the political party for recognition by the Secretary of State.

1. A notarized registration statement must be filed with the Secretary of State no later than 90 days prior to the opening of the qualifying period for any election.

2. The registration statement must be accompanied by a fee in the amount of \$1,000, made payable to the Department of State only by certified, cashier's check on a state or national bank or credit union, United States postal money order, or money order issued by a state or national bank or credit union.

3. The registration statement must be accompanied by a list of registered voters provided by the Department of State pursuant to §905.B with the exact political party name, showing at least 1,000 voters and dated no less than 90 days prior to the opening of the qualifying period for any election.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:441 and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 34:

##### §907. Defects in a Registration Statement

A. No registration statement of a political party shall be accepted by the Secretary of State, if the Secretary of State finds any of the following defects.

1. A political party's name is identical or deceptively similar to the name of any existing national party, yet the two political parties are not affiliated based on information from the national party.

2. A political party's name is identical or deceptively similar to the name of any currently recognized political party.

3. A political party's name is deliberately misleading or fraudulent in any respect.

4. A political party's emblem is deceptively similar to an emblem or trademark of any other existing recognized political party.

5. A political party that attempts to be recognized in this state with the name "Independent" or "the Independent Party."

6. A political party's registration statement is incomplete and/or does not provide the required information. In such a case, the political party may resubmit a completed notarized registration statement without having to pay an additional registration fee. The Secretary of State must receive a resubmitted registration statement no less than 90 days prior to the opening of the qualifying for any election, for recognition to apply in that primary or general election.

B. The Secretary of State shall return the rejected registration statement, along with the registration fee, except in the case of an incomplete statement, where the political party chooses to resubmit a completed notarized registration statement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:441 and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 34:

**§909. Objection to a Registration Statement**

A. Any person aggrieved by the recognition of political party based on the filing of a registration statement alleged to be false, fraudulent, deceptive, substantially misleading or otherwise prohibited by law may file an objection in writing to the Secretary of State.

B. The objection must be filed within two years of the political party's registration filing.

C. The Secretary of State shall provide written notice to the recognized political party whose registration statement is objected to and include with the notice a copy of the objection and any related documentation provided with the objection. The recognized political party may file a written response to the objection with the Secretary of State within 10 days of the date of mailing of the notice by the Secretary of State.

D. The Secretary of State must determine the validity of the objection, by determining whether the political party's registration statement is defective, based on the objection, any related documentation provided with the objection and, if applicable, the response to the objection from the recognized political party.

E. If the Secretary of State determines that the objection is valid, he shall declare the political party's registration statement null and void and cancel the political party's recognition. The Secretary of State shall provide written notice of his decision and the effective date to the political party.

F. The Secretary of State shall not return the registration fee when a political party's registration is canceled pursuant to the provisions herein.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:441 and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 34:

**§911. Notification**

A. The Secretary of State shall provide written notice to a political party that seeks recognition that the political party's registration statement is rejected for any of the reasons set forth in §907 through §909 above.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:441 and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 34:

Jay Dardenne  
Secretary of State

0711#087

**POTPOURRI**

**Department of State  
Elections Division**

Registrars of Voters (LAC 31:II.Chapter 1)

Under the authority of R.S. 18:18, R.S. 18:31, R.S. 18:53, R.S. 18:55, R.S. 18:59, R.S. 36:742, and in accordance with the provisions of the Administrative Procedure Act, R.S.

49:950 et seq., the Secretary of State published a Notice of Intent on June 20, 2007 in the *Louisiana Register* to adopt uniform rules and regulations for the following: procedures for registrars of voters to use in the conduct of their office and the entry of data on the statewide voter registration system; adopt uniform fee schedules for the department to charge for the procurement of statewide voter registration lists; procedures for merit evaluations of unclassified employees; professional review committee; procedures for annual expenditure report; and procedures for the removal of a registrar of voters by the State Board of Election supervisors. After considering all comments and requests, the Department of State has revised the original Notice of Intent.

In accordance with R.S. 49:968(H)(2), a meeting for the purpose of receiving the presentation of oral comments will be held on Monday, January 7, 2008, at 10 a.m., at the XII United Plaza Building (formerly the Broadwing Building) Auditorium (in back of building), 8549 United Plaza Blvd., Baton Rouge, LA.

Interested persons should submit written comments on the proposed changes to Angie Rogers LaPlace, Commissioner of Elections, through 4:30 p.m. on Tuesday, January 8, 2008, at Post Office Box 94125, Baton Rouge, LA 70804-9125. Comments may also be submitted by email to [angie.laplace@sos.louisiana.gov](mailto:angie.laplace@sos.louisiana.gov) or by fax to (225) 922-1167.

**Title 31  
ELECTIONS**

**Part II. Voter Registration**

**Chapter 1. Registrars of Voters**

**§101. ERIN Manual**

A. The Department of State operates a statewide voter registration computer system for the registration of voters throughout the state, the Elections and Registration Information Network, commonly referred to as "ERIN".

B. The Secretary of State shall provide all registrars of voters with an ERIN Manual to be utilized with respect to the statewide voter registration computer system. This manual shall establish procedures with respect to all records, data, and information required for the registration of voters and the transfer of information to the department. All registrars of voters shall utilize this manual to ensure the proper registration of voters. A uniform cost for the preparation of lists of registered voters shall be included in the manual. Any updates of the manual provided by the department to the registrars of voters shall be incorporated into the manual by each registrar of voters.

C. The ERIN Manual shall be submitted to the Committee on House and Governmental Affairs and the Senate and Governmental Affairs Committee for informational purposes. Both committees shall be kept informed of any changes to the manual.

D. Copies of the ERIN Manual can be viewed at the Department of State, Elections Program, XII United Plaza Building, First Floor, 8549 United Plaza, Baton Rouge, LA or at each office of the registrar of voters throughout the state, or at the Office of the State Register.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:18, R.S. 18:31, and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 34:

**§105. Sale of Voter Registration Lists**

A. The Department of State generates voter registration lists through ERIN and establishes guidelines that shall be provided to the registrars of voters for the sale of voter registration lists to the general public.

B. Voter registration lists can either be requested through the department's website [www.GeauxVote.com](http://www.GeauxVote.com) or through a registrar of voters' office. All lists must be paid for in advance based upon an estimate provided by either the department or registrar of voters to the client. All estimates will be signed by the client. Payment shall either be given to the department or the registrar of voters' office. If the registrar of voters' office receives the payment, the registrar shall fax a copy of the check to the department and mail the check to the department within 48 hours. Checks and money orders made payable to the Department of State are the only acceptable forms of payment.

C. The department hereby establishes the cost schedules detailed below for the sale of voter registration lists.

1. Hardcopy Lists

Number of Voters	Cost
1-2,000 voters	\$35
2,001 +	\$0.0175 x number of voters, not to exceed \$5,000
Each duplicate copy of a list costs one-half the cost of the original list.	

a. This list can be requested without districts and shall contain the following information: parish, registration number, ward, precinct, name, party, age, sex, race, last-vote-date, residence, and mailing addresses. If requested, the list will provide telephone numbers.

b. This list can be requested with districts and shall contain the same information above plus the following information: congressional, senatorial, representative, police jury/council, justice of the peace, school board, city district, district court, public service commission, board of elementary and secondary education, tax ward district, and eight special districts. If requested, the list will provide telephone numbers.

2. Mailing Labels (24 labels on a page)

Number of Voters	Cost
1-2,000 voters	\$40
2,001 +	\$0.02 x number of voters, not to exceed \$5,000
Each duplicate page of labels costs \$0.02 times the number of voters.	

a. These labels may be ordered with the following information:

- i. voter's name and mailing address only; or
- ii. voter's name, mailing address, ward and precinct.

3. CD-ROM

Number of Voters	Cost
1-2,000	\$20
2,001 +	\$0.01 x number of voters, not to exceed \$5,000
Each duplicate copy of the CD-Rom costs one-fourth the cost of the original.	

- a. Data on the CD is in text format.
- b. The CD-Rom shall provide the following information: parish, name, ward, precinct, party, residence and mailing addresses, sex, race, age, status, registration date, registration number, last 20 dates voted, and all district information.

c. If requested, the telephone number will be provided.

4. Electronic Mail

Number of Voters	Cost
1-2,000	\$20
2,001 +	\$0.01 x number of voters, not to exceed \$5,000

a. Data submitted through electronic mail shall be in text format.

b. The electronic mail transmittal shall provide the following information: parish, name, ward, precinct, party, residence and mailing addresses, sex, race, age, status, registration date, registration number, last 20 dates voted, and all district information.

c. If requested, the telephone number will be provided.

5. Delivery. The cost for delivery service shall be \$7.50 per list, duplicate list, set of mailing labels or CD-ROM, except for each list, set of mailing labels or CD-ROM that is picked up or mailed electronically.

6. Special Requests. The prices above apply to requests using the standard criteria. A \$100 per hour programming charge will be added for any "special request." Registrars of voters must check with the information technology section of the department prior to agreeing to a request that does not conform to the standard criteria.

D. The client shall review the list immediately upon receipt. If there is a problem with the list, the client must immediately notify the department or registrar of voters. If the client has a valid reason for seeking a new list or getting a refund, they have seven days to return the original voter registration list to the department or registrar of voters to receive a new list or a refund. If the original list has been reproduced, no refund will be issued and a new list will be subject to the appropriate costs. If the reasoning is determined to be justifiable by the department, a new list will be provided or a refund issued.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:18, R.S. 18:31, and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 34:

**§107. Merit Evaluation of the Registrar of Voters**

A. The Secretary of State hereby designates the Director of NVRA, commonly referred to as the Director of Registration, in the Department of State to conduct the annual evaluation of each parish registrar of voters by reviewing completed forms and data submitted by the registrar of voters. The evaluation will consider the timely performance of the registrar's job responsibilities as required by Title 18 of the Louisiana Revised Statutes. Upon approval of an evaluation by the Director of Registration, this information is then submitted to Human Resources to process the pay increase. If needed, the Director of Registration may submit an evaluation to the commissioner

of elections for either approval or disapproval depending upon the information submitted.

B. Annually, the secretary or his designee in conjunction with the Registrars' of Voters Association shall prepare written instructions and forms which shall be submitted to the registrars of voters no later than November 1 for their evaluations. The form shall include mandated duties required by Title 18 of the Louisiana Revised Statutes, non-mandated duties (e.g., attendance at meetings conducted by the Department of State), and extended duties (e.g., going to nursing homes and registering patients).

C. The parish registrar of voters will have until December 15 to submit his completed form with supporting documentation to the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:18, R.S. 18:55, and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 34:

**§109. Merit Evaluations of the Chief Deputy and Confidential Assistant**

A. The parish registrar of voters shall perform the annual evaluation of the chief deputy and confidential assistant.

B. Annually, the secretary or his designee in conjunction with the Registrars' of Voters Association shall prepare written instructions and forms which shall be submitted to the registrars of voters for reviewing the chief deputy and confidential assistant's performance no later than November 1.

C. The parish registrar of voters shall be responsible for evaluating his chief deputy and confidential assistant. These evaluations shall be submitted to the department no later than December 15 of each year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:18, R.S. 18:59, and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 34:

**§111. Professional Review Committee**

A. The Commissioner of Elections shall submit a formal notification to the Professional Review Committee of the Louisiana Registrar of Voters Association of any registrar of voters who does not perform a mandated duty as defined by the annual performance evaluation form.

B. If the department receives a written complaint or email complaint concerning a registrar which does not fall under R.S. 18:53, the department may forward the complaint to the Professional Review Committee.

C. The Professional Review Committee shall investigate the matter and submit a copy of its findings to the board of directors of the Louisiana Registrar of Voters Association no later than 30 days of receipt of a formal notification or complaint. The board of directors shall submit a written copy of the findings and any recommended corrective action to the Commissioner of Elections, the Secretary of State and the State Board of Election Supervisors.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:18 and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 34:

**§113. Annual Expenditure Report to Parish Governing Authority**

A. Annually, the Secretary of State shall provide each parish registrar of voters with an expenditure summary report for all expenses paid by the state on behalf of each registrar of voters. The report shall be mailed out by the department no later than January 31. This information shall be combined with expenses paid by the parish governing authority into a consolidated report. This report must be submitted annually by the registrar of voters to the parish governing authority, Secretary of State, and parish clerk of court.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:18, R.S. 36:742, and R.S. 42:283.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 34:

**§115. Repeal Prior Rules and Regulations**

A. LAC 31:II.101 promulgated by the Department of Elections and Registration in October of 1998 relating to ERIN (Elections and Registration Information Network) is hereby repealed in its entirety.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:18 and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 34:

Jay Dardenne  
Secretary of State

0711#085

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